

Friday  
May 24, 1985

# Federal Register

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### **Administrative Practice and Procedure**

Customs Service  
Interior Department  
Social Security Administration

### **Aid to Families With Dependent Children**

Social Security Administration

### **Animal Diseases**

Animal and Plant Inspection Service

### **Animal Drugs**

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### **Authority Delegations (Government Agencies)**

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Customs Service

### **Exports**

International Trade Administration

### **Fisheries**

National Oceanic and Atmospheric Administration

### **Freedom of Information**

National Archives and Records Administration

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**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

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### Meat Inspection

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### Privacy

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### Radio Broadcasting

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### Securities

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### Supplemental Security Income (SSI)

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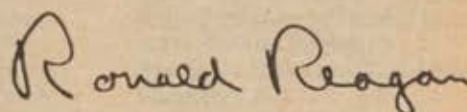
Executive Order 12516 of May 21, 1985

The President

### President's Commission on Executive Exchange

By the authority vested in me as President by the Constitution and statutes of the United States of America, it is hereby ordered that Executive Order No. 12493 of December 5, 1984, is amended by substituting for subsection (a)(2) of section 2 thereof the following:

"(2) career Federal Executives, who are members of the Senior Executive Service, or equivalent level, or are candidates for the Senior Executive Service, or are of outstanding qualification and are serving at an equivalent level to a Senior Executive Service candidate, provided that such level is not lower than level 15 of the General Schedule, will be selected as Presidential Exchange Executives and assigned for one year to positions in the private sector offering significant challenge, responsibility and regular and continuing contact with senior private sector officials."



THE WHITE HOUSE,  
May 21, 1985.

[FR Doc. 85-12785  
Filed 5-23-85; 8:56 am]  
Billing code 3195-01-M



# Rules and Regulations

Federal Register

Vol. 50, No. 101

Friday, May 24, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 81

[Docket No. 85-051]

#### Lethal Avian influenza

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This document removes the Lethal Avian Influenza regulations. The regulations were established for the purpose of preventing the artificial spread of lethal avian influenza. It has been determined that lethal avian influenza no longer occurs in the United States and that the regulations are no longer necessary for this purpose. The effect of this action is to delete prohibitions and restrictions on the movement of live poultry and certain other items and to delete other unnecessary provisions.

**DATES:** Effective date is May 21, 1985. Written comments must be received on or before July 23, 1985.

**ADDRESS:** Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 8505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. H.A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 8505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087.

## SUPPLEMENTARY INFORMATION:

### Background

This document removes the Lethal Avian Influenza regulations (contained in 9 CFR Part 81 and referred to below as the regulations) which consisted of five subparts: (1) Subpart A—Definitions, (2) Subpart B—General Provisions, (3) Subpart C—Quarantined Area Provisions, (4) Subpart D—Extraordinary Emergency Provisions, and (5) Subpart E—Additional Claims. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

The regulations were established for the purpose of preventing the artificial spread of lethal avian influenza. It has been determined that the regulations are no longer necessary for this purpose.

Prior to the effective date of this document, the regulations designated the following two premises in Berks County, Pennsylvania as quarantined areas:

(a) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles south of Bethel on Bordner Road.

(b) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles northwest of Bethel on Schubert Road.

Among other things, the regulations prohibited or restricted certain interstate movements from these quarantined areas of live poultry, poultry eggs, and certain other items because of lethal avian influenza. The poultry on these premises have been depopulated and the premises have been cleaned and disinfected. Sufficient time has now elapsed to ensure that these premises are free of lethal avian influenza virus. Under these circumstances there is no longer a basis for imposing prohibitions or restrictions because of lethal avian influenza on the interstate movement of live poultry or other items from these premises.

Further, based on extensive surveys, it has been determined that lethal avian influenza no longer occurs in the United States.

### Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary

Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary prohibitions and restrictions on the movement of live poultry and certain other items and to delete other unnecessary provisions.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the Federal Register.

### Executive Order and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The portion of the poultry industry affected by this document represents less than one percent of the poultry industry in the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

**PART 81—LETHAL AVIAN INFLUENZA**

Accordingly, 9 CFR Part 81 is removed.

(7 U.S.C. 450, 21 U.S.C. 111-113, 114a-1, 115-117, 119-126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 21st day of May 1985.

E.C. Sharman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-12553 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-34-M

**Food Safety and Inspection Service****9 CFR Parts 317 and 381**

[Docket No. 83-041F]

**Authorization To Manufacture Brands or Other Marking Devices Containing Inspection Legend**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule requires manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by the Food Safety and Inspection Service (FSIS) that would authorize manufacture of these brands and other devices. Manufacturers are required to mark on each such brand or other device they manufacture under this authorization a permanent identifying serial number, which manufacturers would also list on the certificate. Manufacturers are to return the brands or other devices, along with a copy of the completed certificate, to the FSIS employee identified on the certificate (normally the plant inspector-in-charge). The regulations are needed to strengthen the Department's control over the manufacture and distribution of brands and other marking devices and thereby help prevent their illegal use. The rule also makes minor revisions to the regulations to clarify language, to update them, and to make certain provisions conform to statutory language of the Federal Meat Inspection Act and the Poultry Products Inspection Act that deal with authorization to make labels and devices bearing or containing official marks.

**EFFECTIVE DATE:** June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

**SUPPLEMENTARY INFORMATION:****Executive Order 12291**

The Department has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Effect on Small Entities**

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The manufacturers and the meat and poultry establishments are required to fill out sections of the authorization certificate for orders of new brands or other marking devices and to keep the certificate on file. The costs of the rule primarily result from the expense of executing and filing the authorization forms required by this regulation and from the required marking with a permanent identifying number those brands or other devices made after the effective date of the rule. These costs will be incurred by the manufacturer and/or the establishment, and although the ultimate amount and proportion of costs between the manufacturer and the establishment cannot be determined, they should not be significant. No cost is involved in obtaining authorization forms since FSIS will provide them.

The establishments will bear an additional cost of either replacing or marking with a permanent identifying number those brands or other marking devices that are not already marked with an identifying number. The establishments would have one year after the rule's effective date to mark or replace the brands or other devices.

All of the above costs have been estimated to be minimal, while the benefits from improving control over the manufacture and distribution of such devices is expected to be considerable.

**Background**

The Department inspects meat and poultry products, including imported products, that are subject to inspection under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Inspections are conducted by Food

Safety and Inspection Service (FSIS) inspectors at official establishments or at official import inspection establishments at ports of entry. Products that pass inspection are identified with an official inspection legend. The legend appears on containers and certain enclosures of inspected and passed meat and poultry products and is branded directly onto meat carcasses and parts. For example, a brand for cattle carcasses inspected and passed by an FSIS inspector bears a circular legend showing "U.S. INSP'D & P'S'D" and the establishment's assigned number.

Investigations by law enforcement officials over the past 20 years have shown that illegal meat distribution activities have frequently utilized a marking device to brand or otherwise mark meat and poultry products and their containers in order to deceive prospective buyers into believing that products had been inspected and passed by Federal inspectors. During this time, FSIS developed various techniques to discover when operators were using brands or other marking devices illegally. However, the Department has statutory authority to control these devices which has not yet been exercised.

Part of the Department's statutory authority to control these devices dates from 1967. As a result of the exposure of a number of illegal meat distribution activities in the 1960's, the Wholesome Meat Act of 1967 made major revisions to Federal laws concerning meat inspection. The Act included a provision which clarified and strengthened the application of then current prohibitions against counterfeiting labels, certificates or official marks, including legends. Section 11(a) of the Federal Meat Inspection Act (21 U.S.C. 611(a)) provides, "No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary." Almost identical language was later included in the Poultry Products Inspection Act by section 9 of the Wholesome Poultry Products Act of 1968 (21 U.S.C. 458).

When the Department revised the Federal meat inspection regulations to implement the statutory revisions of the Wholesome Meat Act, the Department considered regulatory changes to tighten controls over the manufacture and distribution of brands and other marking

devices containing official inspection legends. The Department determined at that time, however, that it would not exercise its authority to impose these tighter controls.

In the past few years, the Agency has found certain operators of clandestine meat distribution activities in possession of brands that were made by brand manufacturers and delivered to official establishments but never surrendered to the USDA inspector as required. A September 1983 Congressional hearing was held in Philadelphia concerning an illegal branding operation that resulted in nonfederally inspected and passed product being sold and distributed as federally inspected and passed product. At that time, the House Subcommittee on Livestock, Dairy, and Poultry recommended that the Agency improve its security over the devices used to imprint inspection legends.

#### Proposal

These events made it apparent that the Agency needs to expand its use of available authority and refocus its enforcement techniques regarding such illegal operations by regulating brands and other marking devices at their source.

Current meat inspection regulations require an official establishment or official import inspection establishment to supply brands or other marking devices containing an official inspection legend for marking product. The brands and devices are required to be used under the supervision of an inspector, and, while not in use, are required to be kept in the inspector's possession under lock and key (9 CFR 316.4).

The current regulations allow the manufacture of brands or other marking devices that contain the official inspection legend for a particular establishment without prior authorization if the brands or other devices are made as samples for approval by the FSIS Administrator. Once the establishment obtains initial approval of such a brand or other marking device, the regulations provide that new devices "exactly similar to" the original may be made without obtaining further approvals (9 CFR 317.3). The poultry products inspection regulations contain a similar section except that it does not refer to brands since they are not used to mark poultry (9 CFR 381.131). The provisions of §§ 317.3 and 381.131 have had the effect of allowing the manufacture of brands or other marking devices without any prior authorization.

The Agency concluded that the current regulations do not adequately

control the manufacture or distribution of brands or other marking devices containing an official inspection legend because establishments are able to order such marking devices without the knowledge of FSIS. Furthermore, there is no assurance that the brands or other devices are turned over to inspectors for custody.

On September 21, 1984, FSIS published a proposed rule in the Federal Register (49 FR 37103) to require manufacturers of brands or other marking devices bearing specified official inspection legends to have a signed authorization certificate from FSIS before manufacturing such devices. All orders for such marking devices by an establishment would have to be accompanied by the certificate.

The certificate would be identified with a certificate number and indicate the quantity and type of brands or other marking devices ordered by the establishment. An FSIS employee and the establishment would complete and sign a portion of the certificate; both would keep a copy of the certificate, and two copies would be forwarded to the brand or marking device manufacturer with the establishment's order. The manufacturer would engrave or otherwise mark each brand or other marking device ordered with a permanent, unique serial number and complete the FSIS authorization certificate by listing on it the number marked on each device. The manufacturer would keep one copy of the certificate and return the other with the device to the FSIS employee whose name and address is given on the certificate as the recipient of the device. In practice, the plant inspector-in-charge normally would be both the FSIS employee who signs the authorization and the FSIS recipient of the device, but in some instances, as when a new establishment does not yet have an inspector assigned to it, other FSIS employees may be involved.

The numbers engraved on the brands or other marking devices and listed on the certificates would allow an inspector to keep an accurate record of all such marking devices made for the establishment. If a brand or other marking device becomes worn out, destroyed, or lost, an inspector should note this on the certificate listing that device. During an investigation, if it were necessary to determine whether a brand or other marking device suspected of being used illegally was forged or illegally diverted from an establishment, the records could help trace the source of the brand or other device.

The final rule applies only to devices for applying the legend branded on

cattle, sheep, swine, and goat carcasses and parts of carcasses (9 CFR 312.2(a)); the legend stamped on burlap, muslin, cheesecloth, heavy paper, or other acceptable materials that enclose cattle, sheep, swine, and goat carcasses and parts (9 CFR 312.2(a)); the legend used on meat food products in animal casings (9 CFR 312.2(a)); the legend branded on horse carcasses and parts of such carcasses (9 CFR 312.3(a)) and other (nonhorse) equine carcasses and parts of such carcasses (9 CFR 312.3(b)); the legends branded or stamped on imported meat and meat food products or their containers (9 CFR 312.7); and the legend stamped on containers of imported poultry products (9 CFR 381.102).

The controls in the final rule will not apply to devices for applying: (1) Legends appearing on containers and labels for containers of inspected and passed products of cattle, sheep, swine, and goats shown in § 312.2 (b) since these legends must be printed by mechanical means and not by hand stamps; (2) legends appearing on containers of poultry products shown in § 381.96 since they may not be applied by rubber stamps (these legends may be applied to shipping containers by stencil, but such stencils are bulky devices not easily transported or concealed); and (3) the horse meat food product and other equine meat food products official inspection legends shown in § 312.3 since, in practice, establishments mechanically preprint such legends on containers, boxes and labels, even though the regulations do not limit the application of these equine meat food products legends to mechanical, nonhand stamp methods.

A number of minor, related changes to the regulations were also proposed. Section 317.3(b) allows the manufacture of new supplies of labels and other marking devices "of a character exactly similar to" approved labels and devices. This provision would be revised by deleting the quoted phrase since such language adds nothing to the meaning of the provision and has caused unnecessary confusion. Additionally, it was proposed to amend the language in § 317.3 and § 381.131 to more closely conform to the language in the provisions of the Federal Meat Inspection Act (21 U.S.C. 611(a)) and the Poultry Products Inspection Act (21 U.S.C. 458(b)). Furthermore, Figure 5 of § 381.102 shows an obsolete official inspection legend for marking poultry products offered for entry into the United States. The Agency no longer uses the name of the port or geographical area on the legend to

identify where the product was inspected. Instead, the number of the official establishment or official import establishment where the product was inspected is used. As was proposed, the legend currently in use will be shown.

#### Comments on Proposal

FSIS received five comments in response to the proposed rule—two from industry corporations and three from industry associations. All commenters supported the proposed rule, but four recommended changes. The following is a discussion of the issues raised by the commenters and FSIS's response to each:

##### 1. Extent of regulatory application

**Comment:** Four commenters suggested that the proposed rule be amended to clarify that it would not apply to printed or embossed labels.

**Response:** The proposed rule would not apply to legends appearing on certain containers and labels on containers because the legends must be printed by mechanical means. The proposed regulatory amendments, however, inadvertently included printed and lithographed labels. Therefore, the final rule has been amended to delete references to such labels. This clarifies the Agency's intent to regulate only the manufacturer of brands and other hand devices bearing official inspection legends.

##### 2. Identification of current brands and devices

**Comment:** One commenter expressed concern about FSIS procedures for recording brand identification numbers that would be applied by establishments to current brands on inventory.

**Response:** Establishments would place identification numbers on brands currently on inventory under the supervision of the FSIS inspector-in-charge. The inspector would then record the numbers assigned to the brands in the brand control records of FSIS currently in use, which would be a permanent record.

#### Final Rule

After careful consideration of the comments received on the proposed rule, the Administrator has determined that the proposed rule should be adopted as a final rule with minor changes as discussed.

Each manufacturer will be allowed to develop its own serial numbering system, as was proposed. In order to ensure that each brand or other marking device is uniquely identified, the manufacturer will indicate on the brand

or other device, perhaps as part of the serial number, that it was made by that manufacturer.

The simplest and least costly numbering system for a manufacturer to implement would presumably be to assign numbers based on the order in which it manufactures marking devices.

In the case of brands or other marking devices ordered from manufacturers before the effective date of the final rule, establishments are required to mark, under the direction of an inspector, such brands or other devices with permanent identifying numbers or obtain replacement devices within one year.

#### List of Subjects

##### 9 CFR Part 317

Meat inspection, Official inspection marks and devices, Reporting and recordkeeping requirements.

##### 9 CFR Part 381

Poultry and poultry products, Official inspection marks and devices, Reporting and recordkeeping requirements.

Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and the Federal poultry products inspection regulations (9 CFR Part 381) are revised to read as follows:

1. The authority citation for Part 317 continues to read as follows:

**Authority:** 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069.

2. Section 317.3 is amended by revising paragraph (b) and by adding a new paragraph (c) to read as follows:

**§ 317.3 Approval of abbreviations of marks of inspection; preparation of marking devices bearing inspection legend without advance approval prohibited; exception.**

(b) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval by the Administrator.

The provisions of this paragraph apply only to labels, or other marking devices, bearing or containing an official inspection legend shown in § 312.2(b), § 312.3(a) (only the legend appropriate for horse meat food products) or § 312.3(b) (only the legend appropriate for other (nonhorse) equine meat food products), or any abbreviations, copy or representation thereof.

(c) No brand manufacturer or other person shall cast or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a brand or other marking device containing an official inspection legend, or simulation thereof, shown in § 312.2(a), § 312.3(a) (only the legend appropriate for horse carcasses and parts of horse carcasses), § 312.3(b) (only the legend appropriate for other equine (nonhorse) carcasses and parts of other (nonhorse) equine carcasses) or § 312.7(a).

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the brand or other marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the brands or other marking devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall each keep a copy, and the remaining two copies shall be given to the brand or other marking device manufacturer.

(3) The manufacturer of the brands or other marking devices shall engrave or otherwise mark each brand or other marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each brand or other marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the brands or other marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such brands or other marking devices bear identifying numbers, within one year after June 24, 1985, an establishment shall either replace each such brand or other marking device which does not bear an identifying number, or, under the

direction of the inspector-in-charge, mark such brand or other marking device with a permanent identifying number.

(The recordkeeping requirements under this section have been approved by the Office of Management and Budget under OMB #0583-0015.)

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 447, 448, as amended [21 U.S.C. 463, 468]; 76 Stat. 663.

**§ 381.102 [Amended]**

4. Section 381.102 (9 CFR 381.102) is amended to show the following as the new Figure 5:



FIGURE 5

and to revise footnote 2 to read as follows:

\*The number "I-42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

5. Section 381.131 (9 CFR 381.131) is revised to read as follows:

**§ 381.131 Preparation of labeling or other devices bearing official inspection marks without advance approval prohibited; exceptions.**

(a) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without

further approval by the Administrator. The provisions of this paragraph do not apply to marking devices containing the official inspection legend shown in Figure 5 of § 381.102.

(b) No brand manufacturer or other person shall cast or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a marking device containing the official inspection legend shown in Figure 5 of § 381.102 or any simulation of that legend.

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall each keep a copy, and the remaining two copies shall be given to the marking device manufacturer.

(3) The manufacturer of the marking devices shall engrave or otherwise mark each marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such marking devices bear identifying numbers, within one year after June 24, 1985, an establishment shall either replace each such marking device that does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such marking device with a permanent identifying number.

(The recordkeeping requirements under this section have been approved by the Office of Management and Budget under OMB #0583-0015.)

Done at Washington, DC, on: May 10, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-12618 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-DM-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 249

[Release No. 34-22038]

#### Requests for Confidential Treatment Filed by Institutional Investment Managers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of amendments to instructions to form.

**SUMMARY:** The Commission is adopting amendments to the instructions to the form that prescribes the reporting requirements for institutional investment managers exercising investment discretion over accounts having, in the aggregate, more than \$100,000,000 in exchange-traded or NASDAQ-quoted securities. The amendments simplify the procedures for requesting confidential treatment of certain risk arbitrage positions reported on the form and limit the time for which confidential treatment of commercial information may be requested.

**DATE:** The amendments will be effective June 24, 1985.

#### FOR FURTHER INFORMATION CONTACT:

For questions relating specifically to the subject of this release, contact Susan P. Hart, Esq., Office of Disclosure Policy and Adviser Regulation, (202) 272-2098; for questions relating generally to reporting requirements for institutional investment managers under Section 13(f) of the Securities Exchange Act of 1934 and rules thereunder, contact Alice R. Latimer, Technical Information Specialist, Office of Chief Counsel, (202) 272-2038, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is announcing the adoption of amendments to General Instruction D to Form 13F [17 CFR 249.325] under Section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)] ("the Exchange Act"), that simplify procedures for requesting confidential treatment of certain arbitrage information filed on the form and place time limitations on requests for confidential treatment of all commercial information. Under the revised procedures, the Commission will grant confidential treatment for a period not exceeding one year to information about security holdings which are open risk arbitrage positions if the reporting

manager represents in writing at the time report is filed that: (1) The security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which a report is filed; and (2) the reporting manager has a reasonable belief as of the calendar quarter end that it may not close the entire position on or before the date on which the report is required to be filed with the Commission. In addition, the amendments require managers requesting confidential treatment for any commercial information, including open risk arbitrage positions, to limit their requests to a period of one year or less. The amendments balance the public disclosure concerns of Section 13(f) with the needs of institutional investment managers to protect certain investment strategies and holdings from public disclosure under the standards established by the statute and will improve the Commission's overall administration of the Section 13(f) institutional disclosure program.

#### Discussion

In December, 1984, the Commission proposed amendments to General Instruction D to Form 13F under the Exchange Act that were published in Securities Exchange Act Release No. 21539 (December 5, 1984).<sup>1</sup> The purpose of the proposal was to simplify the procedures for requesting confidential treatment of information about open risk arbitrage positions and to limit the amount of time for which confidential treatment of commercial information required by Form 13F could be requested. Eight commentators, including the Chairman of the House Subcommittee on Telecommunications, Consumer Protection and Finance, broker-dealers and a trade association, commented on the proposal. Six commentators generally supported the proposal while two questioned the basis for granting confidential treatment to risk arbitrage information. After considering the comments received, the Commission has decided to adopt the proposed amendments to General Instruction D incorporating certain changes suggested by commentators. These changes are discussed briefly below.

#### *1. Requests for Confidential Treatment of Open Risk Arbitrage Positions*

As proposed, the amendment to paragraph 2(f) of General Instruction D required managers that request confidential treatment for information

about open risk arbitrage positions to provide two good faith representations. As set forth in the proposal, these representations were, first, that the security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which Form 13F is being filed; and, second, that the reporting manager has no present intention to close the position on or before the date the report is required to be filed with the Commission. The proposal provided that, if these representations were made, confidential treatment would be granted automatically for a period of one year.

The Commission requested specific comment on two aspects of the proposed amendment to paragraph 2(f). Since section 13(f) of the Exchange Act provides that commercial information can be granted confidential treatment only in accordance with the Freedom of Information Act ("FOIA"),<sup>2</sup> the release requested specific comment on the Commission's authority to grant confidential treatment to a class of holdings, in this case, open risk arbitrage positions. Comment was also requested on the appropriateness of one year as the initial period for which confidential treatment would be granted. Only one commentator responded to both of these requests and generally supported both aspects of the proposal. However, this commentator also suggested changes to one of the required representations and to the procedures for requesting an extension of the initial grant of confidential treatment.

With respect to the second good faith representation (*i.e.*, that the reporting manager has no present intention to close the open risk arbitrage position on or before the date Form 13F is required to be filed with the Commission), the commentator stated that the representation should be changed to specify that the manager does not intend to close the position in its entirety by the reporting date. Otherwise, the commentator argued, managers might be precluded from using the new procedures to request confidential treatment for positions that would be partially liquidated by the filing date. The commentator asserted that disclosure of a partially liquidated position could have a detrimental impact on the manager's ability to close out the remaining portion of that position.

The Commission has considered this suggestion and modified the second representation in two ways. This

representation now provides that: "the reporting manager has a reasonable belief as of calendar quarter end that it may not close the entire position on or before the date the report is required to be filed with the Commission." The word "entire" has been added to make it clear that only positions that are to be completely liquidated are excluded. In addition, the Commission has changed the requirement that the manager has no "present intention" to close the risk arbitrage position to a requirement that the manager has "a reasonable belief that it [the manager] may not close the entire position." This change is intended to cover the situation where a manager has a present intention to close the position before the filing date, but believes, due to unfavorable market conditions or other adverse circumstances, that it may not be practicable to accomplish this objective.<sup>3</sup> This representation should reflect the manager's belief as of the end of the calendar quarter for which the report is submitted.

The commentator suggested that the procedures for requesting an extension of the initial period for which confidential treatment had been granted to risk arbitrage positions should be modified to require managers making such requests to provide only a statement reaffirming the original representations required in General Instruction D 2(f). The commentator argued that requiring managers to supply full factual support when requesting an extension serves no legitimate regulatory objective if, at the time of the extension request, the risk arbitrage event has not been consummated or terminated.

The Commission continues to believe, however, that requests for an extension of the initial grant of confidential treatment should be accompanied by full factual support and, accordingly, has adopted this portion of the amendment in the form proposed. As amended, the procedures in General Instruction D accord confidential treatment to risk arbitrage positions that are open at the calendar quarter end for a period of up to one year from the date Form 13F is required to be filed with the Commission. This is in effect a 58 week

<sup>3</sup> In the Commission's view, use of this representation would be inappropriate where the consummation of the risk arbitrage event was expected to occur before the filing date and the manager anticipated that all of its shares would be tendered at that time. The representation also would be inappropriate where the manager had an absolute goal to dispose of the entire position before the filing date despite any unfavorable circumstances.

<sup>1</sup> 49 FR 48318 (December 12, 1984).

<sup>2</sup> 5 U.S.C. 552.

period of time, and it is the Commission's opinion that most open risk arbitrage positions would be closed within this period, or if not closed, may no longer be time-sensitive. In those limited circumstances where a position may remain open and sensitive after the 58-week period of time, additional factual information will assist the Commission in determining whether the standards of the FOIA have been met.

Another commentator suggested that in order to obtain confidential treatment, managers should only be required to mark positions in the portfolio as "risk arbitrage" and should not be required to make any other representations. The representations required by paragraph 2(f) of Instruction D limit the application of the new procedures to only those risk arbitrage positions which are open at the calendar quarter end and on the date on which Form 13F is required to be filed (*i.e.*, 45 days later). The required representations are designed to ensure that the new procedures will not be used more broadly and, accordingly, the Commission has not incorporated the suggestion into the amendments as adopted.

The Commission has made a minor modification regarding the time period for which confidential treatment will be granted to open risk arbitrage positions. As proposed, confidential treatment was to be granted automatically for a period of one year to those positions for which the required representations had been made. However, the Commission would like to make it possible for managers to request a shorter period of time where appropriate. Therefore, the language of General Instruction D 2(f) has been changed to indicate that the grant of confidential treatment will be accorded such positions up to one year. Thus, managers will be required to designate a specific period of time for which confidential treatment is requested. This modification also makes uniform the requirements regarding time limitations on any request for confidential treatment of commercial information. Risk arbitrage managers should therefore refer to the following section for more details regarding this aspect of the proposal.

## II. Limitation on Confidential Treatment for Other Commercial Information

As proposed, the amendment to paragraph 2(e) of General Instruction D required managers to limit any request for confidential treatment of commercial information, other than open risk arbitrage positions, to a period of not more than one year. The release asked for comment on whether requests for

confidential treatment for other commercial information (in addition to risk arbitrage) should be limited to a specific time period, and, if so, whether a one-year period was reasonable. The Commission received only one comment on this part of the proposal. While generally supporting the one-year limitation, the commentator suggested that the one-year period should be determined by the filing date of the Form 13F for the calendar quarter ending one year from the calendar quarter for which the initial report was filed. As proposed, the one year period would run from the filing date of the initial report for which confidential treatment was requested. Although the commentator did not explain the reason for the suggested change, presumably, it was so that an extension request could be filed at the same time as the new 13F report. Such a procedure would be impractical, however, because it would not allow time for staff review and processing of the extension request. As proposed, General Instruction D 2(g) required managers that requested an extension of the period of confidential treatment to submit a *de novo* request at least fourteen (14) days in advance of the date on which confidential treatment was due to expire. In the Commission's view, fourteen days gives the staff a reasonable amount of time to review and rule upon the extension request. Accordingly, both paragraphs 2 (e) and (g) of General Instruction D have been adopted as proposed.

## III. Other Matters

Two broker-dealers commented that the proposed amendment regarding open risk arbitrage positions would improve present procedures, but argued that the Commission should expand the applicability of the new procedure to include block positions. These commentators disagreed with the statement in the proposing release that block positions "involve transactions which are completed during a very short period of time." Rather, they asserted that block positioning can involve holding positions for more than 45 days, and that the assumption set forth in the proposing release that block positions held for that length of time would then be held for investment purposes was inaccurate. These commentators contended that broker-dealers make a significant contribution to market liquidity by acting as block positioners, in the same way that risk arbitrageurs contribute to market efficiency; and therefore, block positions should be accorded the same protection as risk arbitrage positions. They also argued that premature disclosure of a block

position could cause harm (*e.g.*, competitors could trade against the position and impede the block positioner's ability to liquidate unobtrusively and without loss), and that this likelihood of competitive harm is no less substantial than the likelihood of harm to a risk arbitrageur.

The Commission agrees that some of these arguments may have merit. However, the Commission believes, particularly given the limited number of block positions maintained for 45 days, that it can adequately address requests for confidential treatment of block position data on a case-by-case basis. Therefore, such requests must continue to be made in accordance with General Instruction D 2(a)-(e).

## Lists of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of Amendment to General Instructions to Form 13F

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

## PART 249—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citations for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*

2. By revising paragraph 2 of General Instruction D of the form prescribed in § 249.325 of Title 17 of the Code of Federal Regulations to read as follows:

§ 249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934.

• • • • •

## General Instructions.

• • • • •

## D. • • •

2. If a request for confidential treatment is based upon a claim that the subject information is confidential commercial or financial information, provide information required by paragraphs (a)-(e) except that if the subject information concerns security holdings which represent open risk arbitrage positions and no previous requests for confidential treatment of those holdings have been made, only the information required in paragraph (f) need be provided.

a. Describe the investment strategy being followed with respect to the relevant securities holdings, including the extent of any program of acquisition and disposition (note that the term "investment strategy," as used in this instruction, also includes activities such as block positioning);

b. Explain why public disclosure of the securities holdings would, in fact, be likely to reveal the investment strategy; consider this matter in light of the specific reporting requirements of Form 13F (e.g., securities holdings are reported only quarterly and may be aggregated in many cases);

c. Demonstrate that such revelation of an investment strategy would be premature; indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; address whether the existence of such a program may otherwise be known to the public;

d. Demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position; show what use competitors could make of the information and how harm to the manager could ensue.

e. State the period of time for which confidential treatment of the securities holdings is requested. The time period specified may not exceed one year from the date the report is required to be filed with the Commission.

f. For security holdings which represent open risk arbitrage positions, the request must include good faith representations that:

(1) the security holding represents a risk arbitrage position open on the last day of calendar quarter for which the report is filed; and

(2) the reporting manager has a reasonable belief as of the calendar quarter end that it may not close the entire position on or before the date the report is required to be filed with the Commission.

If the representations stated above are made in writing at the time Form 13F is filed, the subject security holdings will automatically be accorded confidential treatment for a period of up to one year from the date the report is required to be filed with the Commission.

g. At the expiration of the period for which confidential treatment has been granted pursuant to item (e) or item (f) of this paragraph ("expiration date"), the Commission, without additional notice to the reporting manager, will make such security holdings public unless a *de novo* request for confidential treatment of the information that meets the requirements of items (a)-(e) of the paragraph, is filed with the Commission at least fourteen (14) days in advance of the expiration date.

#### Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [15 U.S.C. 605(b)], the Chairman of the Commission previously certified that adoption of the amendments to General Instruction D of Form 13F will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

#### Statutory Basis

The Commission hereby adopts these amendments to Form 13F pursuant to the authority set forth in sections 3(b),

13(f) and 23 of the Securities Exchange Act of 1934 [15 U.S.C. 78c(b), 78m(f), and 78(78w)].

By the Commission.

**John Wheeler,**  
Secretary.

May 14, 1985.

[FR Doc. 85-12569 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 375

[Docket No. RM85-16-000; Order No. 421]

#### Delegation to the Chief Administrative Law Judge

Issued: May 23, 1985.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** For reasons of administrative efficiency, the Federal Energy Regulatory Commission (Commission) is transferring the authority to designate presiding officers for proceedings under Subpart J of Part 385 of the Commission's rules to the Chief Administrative Law Judge. All pending and future appeals of remedial orders issued by the Department of Energy will be conducted by the Commission's Chief Administrative Law Judge or his designee. This final rule amends the delegations of authority to reflect this change.

**EFFECTIVE DATE:** May 23, 1985.

**FOR FURTHER INFORMATION CONTACT:** Roland M. Frye, Jr., Producer Regulation Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, D.C. 20426, (202) 357-8315.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Federal Energy Regulatory Commission (Commission) is delegating to the Chief Administrative Law Judge the authority to designate presiding officers for all pending and future appeals of adjustment request denials issued by the Department of Energy.

##### II. Discussion

Section 504(b)(1) of the Department of Energy Organization Act<sup>1</sup> accords the

Commission the authority to review contested adjustment denials issued by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) to parties who claim that the DOE's Mandatory Petroleum Price Regulations<sup>2</sup> impose upon them a special hardship, inequity or unfair distribution of burdens. These regulations were promulgated to effectuate the statutory mandates of the Emergency Petroleum Allocation Act of 1973 (EPAA).<sup>3</sup> On January 28, 1981, President Reagan prospectively exempted the petroleum industry from these regulations, thus effectively deregulating crude oil and petroleum products.<sup>4</sup> Eight months later, the enabling legislation expired.<sup>5</sup>

As part of its efforts to expedite the handling of the adjustment denial appeals, the Commission is delegating to the Chief Administrative Law Judge the authority to designate presiding officers to conduct all pending and future adjustment denial appeals.<sup>6</sup> This final rule codifies this redelegation of authority in 18 CFR 375.304 (b) and (c) (1984). In making these revisions, the Commission is not substantively changing the way in which these proceedings are conducted. These cases are now, and will continue to be, conducted under Subpart J of the Commission's Rules of Practice and Procedure.<sup>7</sup> The Commission is nevertheless amending the procedural rules governing adjustment denial appeals in an accompanying order<sup>8</sup> to expedite the processing of these cases and to reduce the burdens on the parties. In addition, the Chief Administrative Law Judge is also authorized to deny or grant, in whole or in part, petitions for waiver of fees prescribed in 18 CFR 381.304 (1984) in accordance with 18 CFR 381.106 (1984).

#### III. Effective Date

Pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C.

<sup>1</sup> 10 CFR Parts 210-212 (1981).

<sup>2</sup> 15 U.S.C. 751 *et seq.* (1982).

<sup>3</sup> Executive Order No. 12,267, 46 FR 9909 (Jan. 30, 1981).

<sup>4</sup> 15 U.S.C. 760(g) (1982).

<sup>5</sup> Because the adjustment denial appeal of Meeker & Co., RA83-1-000, has been consolidated with the same company's remedial order appeal, RO82-85-000, that adjustment case was previously transferred to the Office of Administrative Law Judges. See Delegation to the Chief Administrative Law Judge, 50 FR 15,730 (1985) (Docket No. RM85-3-000) (Order No. 417).

<sup>6</sup> 18 CFR Part 385, Subpart J (1984).

<sup>7</sup> Rules of Practice and Procedure for Commission Review of DOE Adjustment Request Denials (Docket No. RM78-17-000) (Order No. 423). That rule is being issued contemporaneously with this delegation order.

<sup>8</sup> 42 U.S.C. 7194(b)(1) (1982).

553(b) (1982), this rule is issued without prior notice and comment because it is a rule of agency organization, procedure, or practice that will not alter the substantive rights or interests of any interested persons. Specifically, this rule only changes the delegation for appointing presiding officers and waiving fees for review of DOE adjustment denials. In order to expedite review of DOE adjustment proceedings as soon as possible, the Commission finds good cause under 5 U.S.C. 553(d) (1982) to make this rule effective upon issuance.

#### List of Subjects in 18 CFR Part 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act.

#### PART 375—[AMENDED]

In consideration of the foregoing, the Commission amends Part 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

#### PART 375—[AMENDED]

1. The authority citation for Part 375 continues to read as follows for Part 375:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12,009, 3 CFR Part 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

2. In § 375.304, paragraphs (b) and (c) are revised to read follows:

#### § 375.304 Delegation to the Administrative Law Judges.

(b) The Chief Administrative Law Judge is further authorized to designate presiding officers for proceedings under Subparts I and J of Part 385 of this chapter, who shall have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to sections 503(c) and 504(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7193(c) and 7194(b)(1) (1982).

(c) The Chief Administrative Law Judge is further authorized to deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106 of this chapter.

#### § 375.309 [Amended]

3. In § 375.309, paragraph (e) is removed and paragraph (f) is redesignated as (e).

4. In § 375.309, new paragraph (e) is amended by removing the words "§ 381.304, and".

[FR Doc. 85-12558 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

#### DEPARTMENT OF THE TREASURY

##### Customs Service

#### 19 CFR Part 4

(T.D. 85-91)

#### Customs Regulations Amendments Relating to the Entry and Clearance of Vessels

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations to clarify the requirements for entry and clearance for vessels engaged in the lightering of import and export cargo between the U.S. and vessels located beyond the territorial waters of the U.S., as well as for vessels engaged in certain other transactions.

Specifically, the document makes two basic changes. First, a vessel will be required to make entry at a customhouse within 48 hours after arrival in the U.S. if the vessel is returning from another vessel on the high seas after either (1) transporting export merchandise out of the U.S. and transshipping the merchandise to that vessel; or (2) transporting import merchandise to the U.S. after receiving the merchandise from that vessel. Second, an exception is made to the provision that no vessel shall be cleared for the high seas. It will now become necessary for a vessel to obtain clearance if it is bound for another vessel on the high seas to either (1) transship export merchandise which it has transported from the U.S. to that vessel; or (2) receive import merchandise from that vessel and transport the merchandise to the U.S.

**EFFECTIVE DATE:** August 22, 1985.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Hegland, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202)-566-5706.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 3, 1984, a notice was published in the *Federal Register* (49 FR 39072), proposing to amend §§ 4.3, 4.9(a), 4.20(a), and 4.60(e), Customs Regulations (19 CFR 4.3, 4.9(a), 4.20(a), 4.60(e)), in order to clarify the entry and clearance

requirements for lightering vessels, i.e., vessels which transport cargo between the shore and vessels anchored outside U.S. territorial waters. An advance notice of proposed rulemaking (ANPRM) regarding this subject was published in the *Federal Register* on October 14, 1983 (48 FR 46808). That document contains a complete discussion of the initial proposal and relevant court decisions.

Formal entry of a vessel is now required by section 434 (if an American vessel) or section 435 (if a foreign vessel), Tariff Act of 1930, as amended (19 U.S.C. 1434, 1435). These entry requirements of the navigation laws are derived from provisions of the Act of March 2, 1799 (e.g., section 2774, Revised Statutes of the United States). Regulations implementing these entry requirements are set forth in §§ 4.3 and 4.9, Customs Regulations (19 CFR 4.3, 4.9). Clearance of a vessel is required by section 4197, Revised Statutes, as amended (46 U.S.C. 91). This requirement is derived from § 93 of the Act of March 2, 1799. Regulations implementing the clearance requirement are set forth in §§ 4.60-4.75, Customs Regulations (19 CFR 4.60-4.75).

These vessel entry clearance requirements of the navigation laws are basic to the proper discharge of primary missions of Customs (i.e., (1) assessment and collection of import duties and taxes, and (2) control of carriers, persons, and articles entering or departing the U.S. and the enforcement of statutory restrictions and prohibitions). Clarification of the applicability of the entry and clearance requirements is considered necessary because of technological advances in water transportation and in the transportation of cargo since the Act of March 2, 1799. This is especially true in recent years with the increased use of vessels to transport import and export cargo between the U.S. and foreign countries via locations on the high seas beyond the territorial waters of the U.S. At those locations the import and export cargo is transshipped to and from lighters and other vessels arriving from and departing for the U.S. with the cargo.

Section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434), uses the language "arriving in the United States from a foreign port or place" and section 4197, Revised Statutes, as amended (46 U.S.C. 91), uses the term "bound to a foreign port." Clarification of these phrases is essential to a proper application of the law. This is particularly true with regard to lighters and other vessels arriving in the U.S. with import cargo transshipped from a

vessel on the high seas or bound out of the U.S. with export cargo for transshipment to a vessel on the high seas.

If the entry and clearance requirements of the navigation laws are not applicable to lighters and other vessels transporting import and export cargo in and out of the U.S. from and to vessels located on the high seas, it would be, at least theoretically, possible for the bulk of the import and export cargo of the U.S. to be transported in vessels not subject to statutory entry and clearance requirements upon arrival at or departure from the U.S. This would clearly be contrary to the legislative purpose sought to be accomplished by the entry and clearance requirements of the navigation laws and would create severe problems for Customs in carrying out the missions of the agency.

#### Analysis of Comments

Only two comments were received in response to the October 3, 1984, Federal Register notice, one from a state professional association, and the other from the Bureau of the Census, U.S. Department of Commerce. The state professional association merely commented that it supported the proposal because it will help to distinguish between those vessels which are subject to the pilotage laws of that state and those vessels which are exempt from state compliance. Customs only response on this point is that such a result was not then, nor is now our purpose in amending the regulations.

The Bureau of the Census supports the amendment. They want to be able to capture information for statistical purposes concerning the transport of bunker fuel by lightering vessels.

Customs considered this issue and concluded that because a vessel arriving in the U.S. to load bunkers is exempt from entry by statute (19 U.S.C. 1441(4)) and from clearance by regulation (19 CFR 4.60(b)(3)), if it meets the requirements in 19 U.S.C. 1441(4), such vessel business transacted outside U.S. territorial waters also should be exempt from entry and clearance.

We believe that the information on movements of bunker fuel when it is lightered to vessels on the high seas can be captured without applying the entry and clearance requirements to the vessels which do such lightering. We have suggested to Census that it amend its regulations to provide for the documentation of the lightering of bunker fuel on the high seas as well as the taking on of bunker fuel in a U.S. port in a situation in which the vessel is not required to clear.

#### Discussion of Amendments

Part 4, Customs Regulations, relates to vessels in foreign and domestic trade. Customs is amending § 4.3, which relates to vessels required to make entry, by adding a new paragraph (c). This change is necessary because a vessel will be required to make entry at a customs house within 48 hours after arrival in the U.S. if the vessel is returning from another vessel on the high seas after either (1) transporting export merchandise out of the U.S. and transshipping the merchandise to that vessel; or (2) transporting import merchandise to the U.S. after receiving the merchandise from that vessel.

Section 4.9(a), which relates to formal entry of vessels, is also being amended by the addition of the parenthetical phrase "(see § 4.3(c))" after the words "foreign port or place". This change is necessary to alert interested persons to a new vessel entry requirement.

This document also amends § 4.20(a), which relates to tonnage taxes, by adding the words "or the high seas adjacent to the United States or the above listed foreign locations" after the listing of various foreign ports and places. This change is necessary because the definition of a "foreign port or place", from which vessels should be entered in a port of the U.S., now includes the *high seas* adjacent to the U.S. as well as the *high seas* adjacent to other parts of North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, Newfoundland, and the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River). Thus, vessels transacting business with other vessels on the high seas in these geographic areas and then making entry at ports in the U.S. are required to pay tonnage tax at the rate for those geographic areas.

Finally, Customs is amending § 4.60(e), which presently relates to vessels which are bound for foreign ports and are therefore required to clear. The amendment requires a vessel to be cleared for the high seas if it is bound for another vessel on the high seas to either (1) transship export merchandise which it has transported from the U.S. to that vessel; or (2) receive import merchandise from that vessel and transport the merchandise to the U.S.

#### E.O. 12291 and Regulatory Flexibility Act

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis, or other requirements of 5 U.S.C. 603 and 604.

#### Authority

This document is issued under the authority of R.S. 251, as amended, 2793, as amended, 4197, as amended, 4219, as amended, 4225, as amended, sec. 3, 23 Stat. 119, as amended, secs. 434, 435, 441, 624, 46 Stat. 711, as amended, 712, as amended, 759, 58 Stat. 705, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 288, 1434, 1435, 1441, 1624, 42 U.S.C. 269, 46 U.S.C. 3, 91, 111, 121, 123, 128, 2103, 8103, Gen. Hndte. 11, Tariff Schedules of the United States (19 U.S.C. 1202).

#### Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 4

Cargo vessels, Exports, Freight, Harbors, Tonnage taxes, Reporting requirements, Customs duties and inspection, Imports, Vessels.

#### Amendments to the Regulations

#### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.3 is amended by adding a new paragraph (c) to read as follows:

##### § 4.3 Vessels required to enter.

\* \* \*

(c) For purposes of the vessel entry requirement in this section and § 4.9, a "foreign port or place" shall include a vessel on the high seas when the vessel arriving in the U.S. is returning from the vessel on the high seas after having—

(1) Transported export merchandise out of the U.S. to the vessel on the high seas and there transshipped the merchandise to that vessel; or

(2) Transported import merchandise to the U.S. from the vessel on the high seas after having there received the merchandise from that vessel.

##### § 4.9 [Amended]

2. The second sentence of § 4.9(a) is amended by adding the parenthetical phrase "(see § 4.3(c))" after the words "foreign port or place."

**§ 4.20 [Amended]**

3. The first sentence of § 4.20(a) is amended by removing the word "or" after the word "Newfoundland," and adding the words "or the high seas adjacent to the U.S. or the above listed foreign locations" after the words "Orinoco River).".

4. Section 4.60(e) is amended to read as follows:

**§ 4.60 Vessels required to clear.**

(e) No vessel shall be cleared for the high seas *except*, a vessel bound to another vessel on the high seas to—

(1) Transship export merchandise which it has transported from the U.S. to the vessel on the high seas; or

(2) Receive import merchandise from the vessel on the high seas and transport the merchandise to the U.S.\*\*

William von Raab,

Commissioner of Customs.

Approved: May 3, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-12611 Filed 5-23-85; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 4, 19, 103, 111, 112, 152, 159, 162, 174, 175, 176, and 177

(T.D. 85-90)

### Customs Regulations Amendments Relating to Judicial Proceedings

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends various parts of the Customs Regulations, to conform them to the provisions of the Customs Courts Act of 1980 and the Federal Courts Improvement Act of 1982. The Acts clarify and revise the jurisdiction, powers, and procedures of the U.S. Court of International Trade (formerly the U.S. Customs Court) and the U.S. Court of Appeals for the Federal Circuit (formerly the U.S. Court of Customs and Patent Appeals). No substantive changes have been made in these amendments.

**EFFECTIVE DATE:** June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Ron Gerdes, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229 (202-566-2482).

#### SUPPLEMENTARY INFORMATION:

##### Background

In accord with its program to keep its regulations current, the Customs Service has determined that the Customs Courts

Act of 1980 (Pub. L. 96-417) and the Federal Courts Improvement Act of 1982 (Pub. L. 97-164), require conforming amendments to the Customs Regulations contained in Title 19, Code of Federal Regulations, Chapter I (19 CFR Chapter I). A list of the affected sections of the regulations and the necessary changes follow.

#### Discussion of Changes

The Customs Courts Act of 1980 changed the name of the United States Customs Court to the United States Court of International Trade. The Federal Courts Improvement Act of 1982 changed the name of the United States Court of Customs and Patent Appeals to the United States Court of Appeals for the Federal Circuit. These changes necessitate amendments to several sections of the regulations which contain references to the Customs Court and the Court of Customs and Patent Appeals. Therefore, §§ 103.17(b), 152.16, 159.57, 174.31, 175.31, 176.0 and the heading to Part 176, §§ 176.1, 176.2, 176.11, 176.21, 176.31, 177.2(b)(5), and 177.7(b), Customs Regulations (19 CFR 103.17(b), 152.16, 159.57, 174.31, 175.31, 176.0, 176.1, 176.2, 176.11, 176.21, 176.31, 177.2(b)(5), 177.7(b)), are being amended to (1) remove the words "Customs Court," and insert, in their place, the words "Court of International Trade"; and (2) remove the words "Courts of Customs and Patent Appeals," and insert, in their place, the words "Court of Appeals for the Federal Circuit."

Sections 609 and 610 of the Customs Courts Act of 1980 ("the 1980 Act") made changes to sections 592(e) and 604, Tariff Act of 1930, as amended (19 U.S.C. 1592(e), 1604), relating to the prosecution of cases for violation of 19 U.S.C. 1592. Prior to the 1980 Act, these cases were referred to the U.S. Attorney for the commencement of judicial proceedings in the U.S. district courts. These cases are now referred to the Department of Justice for the commencement of judicial proceedings in the Court of International Trade. This has necessitated other amendments to the Customs Regulations. It is necessary to amend §§ 162.31(a), 162.32 (a) and (b), 162.49(a), and 162.75(d)(3), Customs Regulations (19 CFR 162.31(a), 162.32 (a) and (b), 162.49(a), 162.75(d)(3)), by removing references to the U.S. Attorney and adding references to the Department of Justice, where appropriate.

The 1980 Act amended 28 U.S.C. 1581 to provide the Court of International Trade with exclusive jurisdiction over civil actions commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the

Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters. The party commencing the civil action, however, must first demonstrate to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to importation of the goods.

Part 177, Customs Regulations (19 CFR Part 177), relating to the Customs ruling process, does not cite this review authority of the Court of International Trade. Section 177.11(b)(5), Customs Regulations (19 CFR 177.11(b)(5)), provides for Customs Headquarters refusal to consider a request for internal advice whenever Headquarters determines that the time spent in considering the internal advice request would result in the withholding of action with respect to the transactions and the questions presented in the internal advice request subsequently can be raised by the importer or other interested party in the form of a protest in accord with Part 174, Customs Regulations (19 CFR Part 174). No mention is made in this section, however, of the importer or interested party's right to seek judicial review of Customs refusal to consider the internal advice request.

We believe the public should be informed of its right to judicial review by way of the same regulations that set forth the administrative review process. This is consistent with § 174.31, Customs Regulations (19 CFR 174.31), dealing with the administrative review of protests, which sets out the provision for judicial review after the administrative review results in denial of the protest. We are therefore amending § 177.11, Customs Regulations (19 CFR 177.11), to include a new paragraph incorporating the substance of 28 U.S.C. 1581, to inform the public of its right to judicial review of refusals to consider internal advice requests.

In addition to the exclusive jurisdiction conferred upon the Court of International Trade by 28 U.S.C. 1581(h), the Court also has exclusive jurisdiction of any civil action commenced against the U.S., its agencies, or its officers, that arises out of any law of the U.S. providing for, among other things, revenue from imports or tonnage (28 U.S.C. 1581(i)(1)).

Section 4.20(g), Customs Regulations (19 CFR 4.20(g)), which concerns tonnage, states that the decision of the Commissioner of Customs is final on any question of interpretation relating to the collection of tonnage tax or to the

refund of such tax when collected erroneously or illegally, and that any question of doubt shall be referred to him for instructions. This reference to finality, however, relates only to finality of the administrative process within the Treasury Department. It does not preclude further review of the matter by the courts of jurisdiction, in this case the Court of International Trade.

To prevent any misunderstanding concerning the administrative finality of decisions on tonnage, we are amending § 4.20(g), Customs Regulations, to clarify that the decision of the Commissioner of Customs is final only in the administrative sense. Furthermore, to inform the public of its right to judicial review of these decisions, we are adding a new § 4.20(h), Customs Regulations, which will refer to the right to judicial review of these decisions in the Court of International Trade.

The 1980 Act also amended 28 U.S.C. 1581(g), to provide that the Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under § 641(a), Tariff Act of 1930, as amended (19 U.S.C. 1641(a)); and any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)).

The Customs Regulations relating to denial and revocation or suspension of a customhouse broker's license are contained in §§ 111.16-111.17 and 111.51-111.75, respectively (19 CFR 111.16-111.17, 111.51-111.75). Although the regulations relating to the revocation or suspension of a broker's license under 19 U.S.C. 1641(b) set forth the right to appeal a decision of the Secretary of the Treasury, there is no such provision in the regulations relating to the denial of a broker's license.

As with the regulations relating to tonnage tax collection or refund, and the refusal to consider an internal advice request or the refusal to issue a ruling, we believe the regulations concerning the denial or revocation of a broker's license, as well as similar regulations concerning the revocation of a cartman or lighterman's license or the right to operate a bonded warehouse, should be amended to inform brokers, bonded warehouse proprietors, and cartmen and lightermen of their right to judicial review, in the Court of International Trade, of an adverse ruling of the Secretary of the Treasury, the Commissioner of Customs, or the Regional Commissioner of Customs. We are therefore amending §§ 111.17, 112.30,

and 19.3, Customs Regulations (19 CFR 111.17, 112.30, 19.3), relating to the review of the denial or revocation of a broker's, lighterman's or cartman's license, or the right to operate a bonded warehouse.

#### Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely conform the regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

#### Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

#### Inapplicability of Regulatory Flexibility Act

This document is not subject to provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

#### Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects

##### 19 CFR Part 4

Vessels, Cargo vessels.

##### 19 CFR Part 19

Customs warehouses.

##### 19 CFR Part 111

Administrative practice and procedure, Brokers.

##### 19 CFR Part 112

Common carriers, Exports, Freight forwarders.

##### 19 CFR Part 162

Administrative practice and procedure, Penalties Seizures and forfeitures.

##### 19 CFR Part 177

Administrative practice and procedures.

#### Amendments to the Regulations

Parts 4, 19, 103, 111, 112, 152, 159, 162, 174, 175, 176, and 177, Customs Regulations (19 CFR Parts 4, 19, 103, 111, 112, 152, 159, 162, 174, 175, 176, 177), are amended as set forth below.

#### 19 CFR PARTS 103, 152, 159, 174, 175, 176, AND 177—[AMENDED]

1. Sections 103.17(b) and its heading, §§ 152.16, 159.57, 174.31, 175.31, 176.0 and the heading to part 176, §§ 176.1, 176.2, 176.11 and its heading, §§ 176.21, 176.31(a) and its heading, §§ 176.31 (b) and (c), 177.2(b)(5), and 177.7(b) and its heading are amended by removing the words "Customs Court", and by inserting, in their place, the words "Court of International Trade."

2. Sections 152.16, 175.31, 176.2, 176.31(a), 176.31(b) and its heading, 176.31(c), 177.2(b)(5), and 177.7(b) are further amended by removing the words "Court of Customs and Patent Appeals", and by inserting, in their place, the words "Court of Appeals for the Federal Circuit."

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 5 U.S.C. 301; 19 U.S.C. 66, 1624 (28 U.S.C. 293(b), 96 Stat. 25))

#### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.20 is amended by revising paragraph (g) and by adding a new paragraph (h), to read as follows:

##### § 4.20 Tonnage taxes.

(g) The decision of the Commissioner of Customs is the final administrative decision on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(h) Any person adversely affected by a decision of the Commissioner of Customs relating to the collection of tonnage tax, or to the refund of such tax when collected erroneously or illegally, may appeal the decision in the Court of International Trade provided that the appeal action is commenced in accordance with the rules of the Court within 2 years after the cause of action first accrues.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 5 U.S.C. 301; 19 U.S.C. 66, 1624 (28 U.S.C. 1581(i), 2836(i))

## PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Section 19.3 is amended by adding a new paragraph (g) to read as follows:

§ 19.3 Bonded warehouses; alternations; relocation; suspensions; discontinuance.

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Regional Commissioner may appeal the decision in the Court of International Trade.

(R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen. Hdnte. 11, Tariff Schedules of the United States; 28 U.S.C. 1581i (1) and (4))

## PART 111—CUSTOMHOUSE BROKERS

Section 111.17 is amended by adding a new paragraph (c) to read as follows:

§ 111.17 Review of the denial of a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade provided the appeal action is commenced within 60 days after the date of entry of the Secretary's decision.

R.S. 251, §§ 624, 641, 46 Stat. 759, as amended, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624, 1641 (28 U.S.C. 1581(g) 2636(h))

## PART 112—CARRIERS, CARTMEN, AND LIGHTER MEN

Section 112.30 is amended by adding a new paragraph (f) to read as follows:

§ 112.30 Suspension or revocation of license.

(f) *Review by the Court of International Trade.* Any licensee adversely affected by a decision of the Commissioner of Customs may appeal the decision in the Court of International Trade.

(R.S. 251, as amended, secs. 551, 565, 624, 46 Stat. 742, as amended, 747, as amended 759, 19 U.S.C. 66, 1551, 1565, 1624; 28 U.S.C. 1581i (1) and (4))

## PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. Part 162 is amended by adding the phrase "or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)," in the following places:

§ 162.31 [Amended]

a. The third sentence of § 162.31(a), after the words "U.S. attorney";

§ 162.32 [Amended]

b. The first sentence of § 162.32(a), after the words "U.S. attorney";

c. In § 162.32(b), after the words "U.S. attorney for the judicial district in which the seizure was made";

§ 162.49 [Amended]

d. In § 162.49(a), after the reference to the "U.S. attorney."

§ 162.75 [Amended]

2. Part 162 is further amended by removing the words "U.S. attorney for the judicial district in which the seizure was made" and inserting, in their place, the words "Department of Justice" in the first sentence of § 162.75(d)(3)(1).

(80 Stat. 379, R.S. 251, as amended, section 624, 46 Stat. 759, 5 U.S.C. 301, 19 U.S.C. 66, 1624)

## PART 177—ADMINISTRATIVE RULINGS

Section 177.11 is amended by adding a new paragraph (b)(8) to read as follows:

§ 177.11 Requests for advice by field offices.

(b) \* \* \*

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise.

(R.S. 251, as amended, § 624, 46 Stat. 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624, 28 U.S.C. 1581(h))

Alfred R. De Angelus,  
Acting Commissioner of Customs.

Approved: May 3, 1985.

Edward T. Stevenson,  
Acting Assistant Secretary of the Treasury.  
[FR Doc. 85-12608 Filed 5-23-85; 8:45 am]

BILLING CODE 4820-02-M

## 19 CFR Part 24

[T.D. 85-92]

## Customs Regulations Amendment Relating to Payment of Duties, Taxes and Other Charges

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** The Customs Regulation provide that an uncertified check drawn by an interested party on a national or state bank or trust company shall be accepted as payment for Customs duties, taxes and other charges owing, provided a bond securing payment of these obligations is on file with Customs, or if no bond has been filed, provided prior approval has been obtained. This document amends the regulations to provide that importers or interested parties who are delinquent in the discharge of any obligation to Customs as a result of checks being returned to Customs unpaid, will be required to pay duties, taxes or other charges by certified check, money order or cash with each subsequent entry or entry summary, before the merchandise being entered is released from Customs custody or reimbursable services are performed. The names of these importers or interested parties will be placed on one or more of the Customs regions' sanction lists, and the importer or interested party will be required to submit payment by certified check, money order or cash for all subsequent payments until such time as the district director is satisfied that the importer or interested party has demonstrated his ability to consistently present uncertified checks which are honored by the payor bank. This amendment is necessary to ensure that the check is covered by sufficient funds in the banking institution on which it is drawn, thereby relieving Customs of the time and resource-consuming burden of attempting to collect against checks returned for insufficient funds.

**EFFECTIVE DATE:** June 24, 1985.

## FOR FURTHER INFORMATION CONTACT:

Robert Hamilton, Jr., Accounting Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2596).

## SUPPLEMENTARY INFORMATION:

### Background

Section 24.1(a)(3), Customs Regulations (19 CFR 24.1(a)(3)), provides that an uncertified check drawn by an interested party on a national or state bank or trust company of the U.S. shall be accepted by Customs for payment of duties, taxes or other charges if there is on file with the district director of Customs an entry bond or other bond to secure the payment of the duties, taxes or other charges. If a bond has not been filed, the organization or individual drawing and tendering the uncertified check must have been approved by the district director to make payment in this manner. It also is provided that in

determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check.

For the most part, these procedures facilitate the prompt payment of duties, taxes and other charges to Customs. In a significant number of cases, however, uncertified checks submitted in payment of duties and other obligations are returned unpaid by the banking institution because the importer or interested party's account does not have sufficient funds to cover the check. If the obligation remains unsatisfied, the debtor is designated by Customs as a delinquent payor and his name is placed on a sanction list published by the Customs Financial Management Division of the region in which the debt is incurred. This listing is furnished to import specialists, inspectors and other Customs officials with instructions not to release the delinquent payor's merchandise unless a duty-paid entry is filed and not to provide reimbursable services unless cash payment is first tendered.

Although a duty-paid entry is required from a delinquent importer or interested party, this has not proved to be an adequate method of ensuring payment of duty inasmuch as the importer or interested party may continue to submit uncertified checks that are dishonored because of insufficient funds. Moreover, it is very likely that imported merchandise will have been released before the check is returned to Customs unpaid by the banking institution.

Customs past attempts to collect the duty or other obligations from delinquent importers or interested parties who habitually submit checks that are dishonored because of insufficient funds or, if these attempts are unsuccessful, from the surety on the importer's bond, have resulted in unnecessary administrative expense and loss of revenue.

Accordingly, by notice published in the *Federal Register* on June 28, 1984 (49 FR 26604), it was proposed to amend § 24.1(a), Customs Regulations (19 CFR 24.1(a)), to provide that where the importer or interested party is delinquent in the payment of duties or any other obligation to Customs, the district director shall require a certified check, money order or cash from the importer, party in interest or agent for each subsequent payment until the delinquent debt is satisfied. Interested

parties were given until August 27, 1984, to submit comments with respect to the proposed change. Thirteen comments were received in response to the notice. A discussion of the comments and our responses follow.

#### Discussion of Comments

##### *Comment:*

Several commenters stated that the proposed amendment is too broad in that it requires payment by certified check, money order or cash from importers or interested parties who are merely delinquent in the payment of any obligation to Customs, regardless of whether they had presented, as payment of the obligation, checks that were returned for insufficient funds.

##### *Response:*

We agree. Our intent in amending § 24.1(a) is to require all importers or interested parties who in the past have presented checks which were dishonored by the payor banks for reason of insufficient funds, to make subsequent payments for all debts to Customs by the certified check, money order or cash method. Therefore, the amendment to § 24.1(a) is being revised to clarify that payment by check, money order or cash will be required of debtor importers or interested parties who have, at any time within the preceding 12 months, paid duties or any other obligation to Customs by check and more than one check was returned for insufficient funds. This method of payment will be required for each subsequent entry or payment until such time as the district director is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution.

The delinquent debtor whose delinquency results from his presentation of more than one dishonored check within the preceding 12-month period will have his name put on Customs sanction list. However, this list is not limited to this type of delinquent debtor; it also may contain the names of delinquent debtors whose delinquency is the result of other action by the debtor.

##### *Comment:*

One commenter recommends that the proposal be expanded to include estimated duties, claiming that the word "duties" alone is not sufficiently descriptive. It was further recommended that the term "customhouse broker" be included in the amendment along with the terms "importer, party in interest, or agent," to identify those persons who

may be delinquent in the payment of duties or any other obligation to Customs, since brokers often submit duties on behalf of importers of record. The commenter fears that a broker may circumvent the intent of this amendment by making an entry in his name for the account of a delinquent importer.

##### *Response:*

The word "duties" covers all duties, estimated or liquidated, and all taxes, collected or assessed. Therefore, it is not necessary to include the word "estimated" before "duties".

It also is not necessary to include brokers in the amendment. If a broker makes an entry in his own name, obligating his bond, then he is the importer of record and thus is covered by the term "importer of record" in the amendment. The broker may actually be acting on behalf of a delinquent importer. However, if within the preceding 12 months the broker has no record of presenting Customs with more than one check that has been dishonored, Customs may not require the broker to present a certified check, as it would have required of the delinquent importer, provided that the broker is using his check or the check of a non-delinquent interested party. This does not circumvent the intent of the amendment, which is to ensure that the check will be honored.

##### *Comment:*

Several commenters are concerned that a delinquency by a branch or subsidiary office of the importer of record at one location would cause a sanctioning of all company locations.

##### *Response:*

The importer of record is responsible for timely duty payments by all its branch offices. A delinquency incurred by one branch office for presenting a check that is dishonored may indeed result in all branch offices of the importer of record being required to submit subsequent payments of duty or other obligations by certified check, cash or money order. It is the importer of record's responsibility to supervise its branch offices. The importer can correct this situation and have its name removed from the sanction list by convincing the district director that it is capable of having all its field offices render uncertified checks which are honored by the financial institution on which they are drawn.

##### *Comment:*

One commenter states that the proposal ignores the intent of E.O. 12291,

in that it is based upon assumptions that it would relieve Customs of the time and resource-consuming burden of attempting to collect duty and other charges from delinquent importers, and that the continuation of the present system is very likely to lead to the assessment of higher bond charges by surety companies.

#### Response:

It is expected that administrative savings will result from the amendment since it will reduce the number of checks presented to Customs which are subsequently dishonored, thus reducing the time and money spent in attempting to collect against dishonored checks.

Upon consideration of all the comments received, and upon further review of the matter, it has been determined advisable to adopt the proposal, with the modifications noted in this document.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 24

Customs duties and inspection.  
Imports, Accounting.

#### Amendment to the Regulations

Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below.

William von Rabb,  
Commissioner of Customs.

Approved: May 3, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

#### PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Section 24.1(a), Customs Regulations (19 CFR 24.1(a)) is amended by

redesignating paragraph (a)(3) as (a)(3)(i) and adding new paragraph (a)(3)(ii) to read as follows:

#### § 24.1 Collection of Customs duties, taxes, and other charges.

(a) \* \* \*

(3) \* \* \*

(ii) If, during the preceding 12-month period, an importer or interested party has paid duties or any other obligation by check and more than one check is returned dishonored by the debtor's financial institution, the district director shall require a certified check, money order or cash from the importer or interested party for each subsequent payment until such time that the district director is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution.

(R.S. 251, as amended (19 U.S.C. 66), section 1, 19 Stat. 247, 249 (19 U.S.C. 197); section 1, 38 Stat. 965 (19 U.S.C. 198); section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), section 648, 46 Stat. 762 (19 U.S.C. 1648))  
[FR Doc. 85-12610 Filed 5-23-85; 8:45 am]

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Social Security Administration

#### 20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

#### Federal Old-Age, Survivors and Disability Insurance, Supplemental Security Income for the Aged, Blind, and Disabled; Changes of Time or Place of Hearings Before Administrative Law Judges, Notice of Hearing, and Dismissal of Requests for Hearing When Claimants Fail To Appear

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

**SUMMARY:** These final regulations establish standards for determining whether there is good cause for changing the time or place of an administrative law judge (ALJ) hearing at a claimant's request. The final regulations also extend from 10 days to 20 days the minimum time period for notifying the claimant and his or her representative of the time and place of the hearing. Lastly, the final regulations clarify that an ALJ may dismiss a request for hearing without further contact with the claimant or his or her representative when the claimant and

the representative fail to appear at a scheduled hearing and the ALJ has not found good cause for changing the time and place of the hearing. These regulations pertain only to claimant hearings before ALJs under titles II and XVI of the Social Security Act, and will not affect other proceedings conducted by the Social Security Administration (SSA).

**EFFECTIVE DATE:** May 24, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Eugene Larkin, Division of Hearings Procedures, Office of Policy and Procedures—Office of Hearings and Appeals, Room 101 Webb Building, P.O. Box 3200, Arlington, Virginia 22203, telephone (703) 235-8545.

#### SUPPLEMENTARY INFORMATION:

#### General Summary

A notice of proposed rulemaking (NPRM) was published on March 23, 1984 (49 FR 10939) with a 60-day public comment period.

We received 17 written comments on the notice of proposed rulemaking, including several letters received after the close of the 60-day comment period. All of these comments have received consideration. The majority of these comments were from legal services agencies and attorneys who represent claimants before SSA. In addition, we received comments from a group of six ALJs.

Although many of the commenters recommended various changes in the proposed regulations, they generally supported (1) the inclusion of additional information on the notice of hearing; (2) extending from 10 to 20 days the minimum time period for notifying the claimant and his or her representative of the time and place of the hearing; and (3) publication of good cause criteria for changing the time or place of hearing. Some of the commenters supported the regulation clarifying that a notice of failure to appear at a scheduled hearing is not required in all instances if a claimant fails to attend a hearing. Others expressed the opinion that the existing regulations should not be revised in this regard.

As discussed below, we have made changes and clarifications in the final regulations in response to the public comments. Also, to the extent possible, we have amended the final regulations to accommodate the special needs of some beneficiaries and we have clarified points which caused some commenters to interpret the proposed regulations as more restrictive than we intended.

## Background

The ALJ has the authority under existing regulations to set the time and place for the hearing and send the notice of hearing (20 CFR 404.936 and 416.1436). (Under our operating procedures, the place of hearing will be one of the hearing sites established for use by the hearing offices (HOs) unless the claimant is confined to his or her residence or an institution. In these instances, consideration is given to holding the hearing at the claimant's residence or in the institution.) Prior regulations §§ 404.936 and 416.1438 require the ALJ to send a written notice of the time and place of the hearing to the claimant at least 10 days before the scheduled hearing.

If the claimant or representative objects to the time or place of the scheduled hearing, he or she must notify the ALJ at the earliest opportunity. The ALJ may then change the time or place for the hearing if good cause is shown. Under prior regulations §§ 404.957 and 416.1457, the ALJ may dismiss a request for hearing if neither the claimant nor his or her representative appears at the scheduled hearing and (1) before the time set for the hearing, the claimant does not give the ALJ a good reason for changing the time or place of the scheduled hearing; or (2) within 10 days after the ALJ sends a notice requesting that a reason for not appearing be provided, the claimant fails to provide a good reason.

The plaintiffs and the District Court in *Pulido v. Heckler* expressed concern that our regulations did not set forth standards to be applied and factors to be considered by our ALJs in determining whether there is good cause for changing the time or place of hearings. The Court in that case has specifically ordered that we amend our regulations to provide such standards.

A second, related criticism of our regulations voiced by claimants and their representatives was that the requirement that the ALJ notify the claimant at least 10 days in advance of the time and place of the hearing in many situations did not permit the claimant and his or her representative enough time to make necessary arrangements and to fully prepare for the ALJ hearing. These individuals urged that this requirement be changed to provide a longer period of notice before the date of the hearing.

## Summary of Rulemaking Proposal, Public Comments on It, and our Response to the Public Comments

As noted above, we received 17 comments on the NPRM. In this section

we have grouped the comments according to the subject matter and responded to each comment.

## A. Changes Regarding Hearing Notices Summary of Rulemaking Proposal

The NPRM proposed to add to regulations § 404.936 and § 416.1438 a sentence explaining that the notice of hearing will be provided to the claimant at least 20 days prior to the date of hearing and that it would contain information about requesting changes in time or place of scheduled hearings and about the procedure for dismissal of a request for hearing when the claimant and his or her representative fail to appear at the scheduled hearing without good cause. In addition, the notice of hearing would include a reminder that, in accordance with regulations §§ 404.935 and 416.1435, the claimant should, if at all possible before the date of the hearing, submit any additional evidence that he or she wishes to have considered by the ALJ to facilitate the ALJ's consideration of his or her case.

**Public Comment.** A number of commenters stated that the regulations should provide that the notice of hearing be sent to the person's representative, if identified.

**Response.** Since regulations §§ 404.1715 and 416.1515 already require that copies of all notices be sent to the claimant's representative as well as to the claimant, it is not necessary to include this procedure in these regulations.

**Public Comment.** Some commenters stated that the notice of hearing should explain the good cause provision, what it means, when it will be granted, and how to apply for it.

**Response.** The final regulations at §§ 404.938 and 416.1438 provide that the notice of hearing will "... also contain an explanation of the procedures for requesting a change in the time or place of your hearing. . . ." The "explanation of the procedures" includes the meaning of good cause, when it will be found, and how to request that it be found.

**Public Comment.** In regard to the submittal of evidence before the hearing "if possible," some commenters stated that a number of ALJs imposed rigid rules requiring that all evidence be submitted 10 days in advance of the hearing. They stated that this leaves the claimant with the idea that the evidence must be submitted prior to the date of the hearing, and will not be accepted on or after the date of the hearing. The commenters stated that the notice of hearing should stress that any evidence presented at the hearing will receive full consideration.

**Response.** The preamble to the proposed regulations indicated that the notice of hearing would include a statement that the claimant should, if possible before the date of the hearing, submit any additional evidence that he or she wishes to have considered by the ALJ to facilitate the ALJ's consideration of his or her case. This statement was intended to make it clear that it is preferable to have the ALJ receive the additional evidence, if available, before the date of the hearing. However, such evidence may be submitted on the date of the hearing (or within such additional period as the ALJ may provide) and will receive appropriate consideration. We will change the notices of hearing to address this concern.

**Public Comment.** A commenter stated that the notice of hearing should inform the claimant that he or she is entitled to receive reimbursement for travel expenses or advance payment for these expenses if needed, and explain the procedures for requesting either advance payment or reimbursement.

**Response.** The claimants are advised of travel provisions in a pamphlet sent to them at the time they are advised of their right to a hearing. Therefore, we do not think it is necessary to include a detailed explanation of the administrative procedures involved in travel reimbursement in the notice of hearing especially since most hearings are held within 75 miles of the claimant's residence and therefore, travel expenses, if any, are not reimbursable.

**Public Comment.** A commenter recommended that all of SSA's Office of Hearings and Appeals (OHA) notices be revised to use simple, clear language and bold type to assist the public in comprehending their meaning.

**Response.** In preparation of the content and format of notices used by SSA, careful attention is being given to insure that clear simple language and bold type are used where appropriate to assist the public in comprehending their meaning.

## B. Standards for Determining Good Cause for Changing the Time or Place of an ALJ Hearing

### Summary of Rulemaking Proposal

The NPRM proposed to amend regulations §§ 404.936 and 416.1436, regarding time and place for a hearing before an ALJ, to set forth the standards to be applied and the factors to be considered by an ALJ in determining whether there is good cause for changing the time or place of a hearing at a claimant's request.

The regulations provide situations in which good cause *will* be found when the reason given by the claimant or representative is supported by the facts. The regulations also provide examples of when good cause *may* be found where the reason given by the claimant or representative is supported by the facts and granting the request would not adversely impact on the orderly administration of the hearing process. Examples of reasons the claimant might provide include illness or other emergency involving the claimant or representative, hospitalization, situations involving the unavailability of a representative or transportation, or the inability of a witness to attend the scheduled hearing. Factors which could affect the orderly administration of the hearing process include the impact of the change on the processing or other scheduled hearings, delay which might occur in rescheduling the claimant's hearing if the request is granted (e.g., when the claimant's hearing must be held at a remote hearing site which the ALJ visits only infrequently), and whether any prior changes were granted to the claimant.

**Public Comment.** A commenter recommended that the good cause criteria be applied to all other similar SSA proceedings, e.g., the face to face reconsideration hearings, since the same problems arise regardless of the nature of the proceedings.

**Response.** Steps are being taken to assure that the criteria for good cause are the same for all similar hearing proceedings conducted by SSA.

**Public Comment.** A number of commenters stated that they are concerned with the arbitrary actions of some ALJs on requests for changes in the time or place of hearings and recommended that the good cause criteria focus on the "hardship" visited on the claimant if he or she is required to attend the hearing at the time and place designated by that ALJ.

On the other hand, the group of ALJs who commented recommended elimination of the situations set out in the regulations in which good cause must be found, preferring instead to base determinations of good cause on the "material facts" and the claimant's "diligence in asserting good cause."

**Response.** The final regulations, as we proposed, require that the time or place of the hearing be changed in situations we believe cause a hardship to the claimant and any contrary finding would be inequitable. The situations in which the ALJ has discretion, on the other hand, are tempered by administrative considerations because these situations basically involve

factors over which the claimant or his or her representative have some control, and retaining the scheduled date or place of hearing would not result in such hardship to the claimant that he or she would be deprived of due process. Thus, in these situations, we will consider the "disabilities" involved, the hardships such as how long an individual must be in travel status, what means of transportation are available, and how difficult it is for the claimant to utilize the available means of transportation. However, since all claimants should be treated with reasonable promptness, it is not possible to make claimant convenience or hardship the sole criterion for determining good cause.

**Public Comment.** Several public advocacy groups recommended that before administrative concerns are considered in the evaluation of whether there is good cause to change the time or place of a hearing, ALJs should be directed to travel regularly to hearing sites regardless of how many cases will be heard and that cases should be heard within 90 days of granting the request to change the time or place of hearing.

**Response.** In evaluating good cause, these regulations provide that we consider the reasons given for requesting the change; the facts supporting the request; and in appropriate cases, the impact of the requested change on the efficient administration of the hearing process. However, the suggestion that the ALJs should be required to travel to hearing sites which would include remote sites, without consideration of administrative factors, including workload, is not feasible. Similarly, because of workload factors and budgetary considerations, it is not feasible to impose rigid time frames for holding hearings after a change in time or place has been granted.

**Public Comment.** Some public advocacy groups commented that the regulation should not require that a request for change in a time or place of hearing be made in writing, arguing that this would cause significant delays in receipt of such requests by SSA, i.e., it is easier to call than to write. They recommended that the regulation provide that "where possible" the request be in writing, but that the fact that it is not, should not be a bar to finding good cause. They also suggested that telephone hearings be used for individuals in very rural areas where travel to a hearing site would constitute a substantial hardship.

**Response.** The final regulation provides that the request for a change in the time or place of hearing "should be" in writing, if possible. However, we

believe that the proposed telephone hearings might not allow the ALJ to completely evaluate disability cases. The demeanor and credibility of the claimant and witnesses and the appearance of the claimant are important factors in disability evaluation and can be most fully considered in a face to face hearing. In addition, if the evidence demonstrates that a claimant is medically unable to travel to a hearing site, it may not be necessary to hold a hearing to decide that the claimant is disabled. Furthermore, as provided in operating instructions, when appropriate, a hearing may be held in the claimant's home or in an institution.

**Public Comment.** Some public advocacy groups noted that the proposed regulation lists a number of situations where the ALJ may reschedule a hearing if administrative factors do not outweigh granting the exception, and suggested that in some of these situations, the granting of the request should not be considered in conjunction with administrative factors. The situations mentioned are (1) the claimant has attempted to get a representative but needs more time; (2) the representative has another obligation at the time of the scheduled hearing; (3) transportation to the hearing site is unavailable; and (4) the claimant lives closer to another hearing site.

**Response.** In general, the situations suggested by the commenters involve factors over which the claimant or his or her representative have some control, and retaining the scheduled date or place of hearing would not result in such hardship to the claimant that he or she would be deprived of due process. Our response to each specific situation is:

(1) A change in time because the claimant has not secured representation "may or may not be granted" because the claimant is provided notification, prior to the scheduled hearing, of the importance of having representation at the hearing, i.e., the claimant is notified of the importance of representation (a) at the time he or she is advised of the right to a hearing, (b) when the HO acknowledges receipt of the request for a hearing from an unrepresented claimant, and (c) in the notice of hearing which is sent at least 20 days before the scheduled hearing. Therefore, the claimant is given sufficient notice and time to secure representation.

(2) A change in time of hearing because a representative has another appointment "may or may not be granted" because the 20 days notice of a scheduled hearing date to a representative should provide ample

time for the representative to make arrangements so that matters unrelated to the claimant will not interfere with attendance at the scheduled hearing. If a representative is scheduled to appear simultaneously at two Social Security hearings, the HOs involved can vary the times of the hearings adequately to permit attendance at both hearings.

(3) A change in the time or place of hearing because transportation to the hearing site is not readily available "may or may not be granted" because the claimant is provided at least 20 days to arrange for transportation to the hearing site. Where public or private transportation is not readily available to the claimant, the ALJ may decide not to dismiss the request for hearing and may be able to arrange a more suitable site for the hearing.

(4) A change in the place of hearing because a claimant lives closer to another hearing site or a representative's office is closer to another hearing site, "may or may not be granted" because the ALJ may be able to select a site which will permit a claimant an earlier hearing date even though that hearing site is farther from the claimant's home than another site. Automatically rescheduling the hearing at the closer site or at the HO servicing the claimant's representative, upon request, may not serve all claimants' needs for a prompt hearing and decision. Therefore, changing the hearing site to a site closer to the claimant or the claimant's representative requires consideration of the criteria for good cause set out in these regulations.

**Public Comment.** An attorney was under the impression that the regulations made the sending of dismissal orders discretionary.

**Response.** Sending a dismissal order is mandatory whenever an ALJ decides that a request for hearing should be dismissed.

**Public Comment.** The group of ALJs in their comments suggested that the regulations should (1) limit consideration of requests for changing the time or place of the hearing because a representative needs preparation time, to those situations where the representative has been appointed within 30 days prior to the date set for hearing; (2) require that a finding regarding good cause be supported by "material facts"; (3) require that a finding of good cause for unavailability of a witness be based on whether the witness will testify to facts material to the case and the evidence cannot be otherwise obtained; and (4) delete from the criteria the situation where a claimant lives closer to another hearing site.

**Response.** The final regulations provide that a request for changing the time or place of a hearing because a representative needs preparation time will apply to those situations where the representative has been appointed within 30 days prior to the date set for the hearing. Similarly, the final regulations provide that a finding of good cause for unavailability of a witness will be based on whether the witness will testify regarding facts material to the claim and be limited to those cases where the evidence to be presented by the testimony of the witness cannot be obtained otherwise.

The final regulations do not require that a finding regarding "good cause" be supported by "material facts" because we believe that it is important that the standard of proof for "good cause" be left to the discretion of the ALJ. Finally, the regulations will provide that a change in the time or place of hearing may be granted where a claimant lives closer to another hearing site. However, whether or not the request is granted will depend on the factors presented in the individual case.

#### *c. Dismissal of ALJ Hearing Requests When the Claimant Fails To Appear* Summary of Rulemaking Proposal

The NPRM proposed to amend regulations §§ 404.957 and 416.1457 to clarify the procedures governing dismissal of hearing requests. Specifically, the existing regulations authorize the ALJ to dismiss a request for hearing if neither the party nor the representative appears at the time and place set for the hearing and (1) before the time set for the hearing, the party or representative did not provide the ALJ with a good reason why the party or representative did not provide the ALJ with a good reason why the party or representative could not appear; or (2) within 10 days after the ALJ mails the party a notice asking why the party did not appear, the party does not give a good reason for failing to appear.

The new regulations clarify the existing regulations. The two alternative procedures permitted by the regulations are more explicitly set out, and it is made clear that the party will be advised in the notice of hearing that if he or she does not appear, the request for hearing may be dismissed without further contact with the party or representative. We do not believe that the new language represents a substantive departure from the existing regulations governing dismissals of hearing requests. The ALJs will continue to have the discretion to use either of the alternative procedures to assure that

the claimant is clearly notified about the possible consequences of failure to appear at his or her scheduled hearing. If a hearing request is dismissed, our notice of the dismissal advises the claimant that he or she may, within 60 days after the date the dismissal notice is received, request that the dismissal be vacated.

**Public Comment.** Some commenters indicated that the regulations § 404.957 and § 416.1457 concerning dismissals of hearing requests should not be revised since the language already in the regulations was better. On the other hand, a number of other commenters raised concerns (see the public comments which follow) about the present regulatory language and asked that changes be made.

**Response.** Under the prior regulations a request for hearing could be dismissed without further contact if a claimant failed to appear. Since the final regulations, like the proposed rules, clarify the existing regulations, we believe it would be more appropriate to address the public's concerns and make appropriate changes in the regulations rather than to delete the amendments the commenters questioned or not to change the regulations. The language in regulations § 404.957 and § 416.1457 has been amended to make it clear that if a claimant has been notified that his or her request for hearing may be dismissed without further notice if neither the claimant nor his/her representative appears at the scheduled hearing, and good cause is not shown, the ALJ may dismiss the request for hearing without further notice requesting a reason for the failure.

**Public Comment.** A number of commenters, including several of the public advocacy groups, stated that the provision permitting the ALJ to dismiss for failure to appear without first contacting the claimant to determine why he or she did not appear was "unfair" and should be excluded from the final version. The commenters stated that this provision is not related to the Court's order in *Pulido* and penalized exactly the person in most need of the ALJ's assistance; i.e., the mentally disturbed, the illiterate, anyone unable to understand the importance of the notice received prior to the hearing, etc.

**Response.** We believe that the concerns expressed in these comments regarding an individual's inability to respond to a notice of hearing due to his or her physical or mental condition are covered by §§ 404.936(c)(1) and 416.1436(c)(1). If a claimant is unrepresented, fails to respond to a notice of hearing and the evidence

supports the conclusion that the failure is due to a physical or mental condition, a finding of "good cause" will be made.

A new paragraph (d)(7) has been added to §§ 404.936 and 416.1436 of the regulations to specifically indicate that an ALJ may find "good cause" if the claimant is unrepresented and illiterate. If a claimant has previously responded appropriately to written notices and timely filed previous appeals, the claimant has demonstrated a reasonable ability to cope with his illiteracy. We believe that failure by such a claimant to respond to a notice of hearing may not be presumed to be due to illiteracy and that in these situations a decision as to "good cause" must be made on the facts on a case-by-case basis. Therefore, where an ALJ finds that an individual is illiterate and has attempted to exercise reasonable care but was not able to determine the meaning of the notice of hearing, then the administrative factors in paragraph (d) will not be given much weight and a finding of "good cause" will be made.

**Public Comment.** The commenters state that this regulation presumes that in all cases the claimant actually received the original notice. They also note that the ALJ will not know if the notice was received unless a personal contact is made with the claimant. In addition, the public advocacy groups state that the "res judicata" implications of a dismissal without contacting the claimant are so significant that before dismissing a request for hearing, all reasonable steps should be taken by the HO staff to contact the party and determine why he or she failed to appear. Finally, they state that under the proposal, the ALJs and Appeals Council (AC) will face an increase in situations in which they must rule on good cause after a dismissal, and thus, the proposed regulations will merely replace one HO and AC burden with another without materially benefiting the claimant, the HO staff, or the AC.

**Response.** The instructions implementing the regulations will provide that where the claimant does not promptly notify the ALJ that he or she will attend the scheduled hearing, the HO staff will attempt to contact the claimant by phone or mail to determine if he or she received the notice and will attend the scheduled hearing. If the individual indicates that he or she did not receive the notice of hearing, a notice will be sent by certified mail. If the claimant advises that he or she will not attend the scheduled hearing, the HO staff will record the claimant's reasons in the claim folder and refer problem situations to the ALJ for

appropriate action. This will alert the ALJ to situations where a party may not have been able to respond appropriately to the notice of hearing. If the HO staff is unsuccessful in contacting the claimant, the file will be documented to reflect the attempts made to contact the individual before the ALJ acts on the request for hearing.

**Public Comment.** Some of the commenters stated that the provisions for appeal of a dismissal are insufficient to insure that ALJs will not arbitrarily dismiss a case when a party is unable to attend a scheduled hearing. They also stated that the reason the claimant did not appear at the hearing may also affect their ability to appeal a dismissal order.

**Response.** Our procedures provide for the HO to attempt to contact the claimant when he or she does not respond to the notice of hearing. We believe these procedures and regulations, §§ 404.970 and 416.1470, which specifically provide for AC review if there appears to be an abuse of discretion by an ALJ, protect a claimant from arbitrary dismissal actions by an ALJ. We further believe that our regulatory provisions for finding good cause for changing the time or place of hearing and for vacating an ALJ's dismissal where a claimant failed to appear at a scheduled hearing (§§ 404.960 and 416.1460) are sufficient to protect a claimant who fails to appear at a scheduled hearing where good cause is present.

#### Regulatory Procedures

##### Executive Order 12291

We anticipate some savings in administrative costs under these regulations because the ALJs and the public will be provided guidance on what constitutes good cause for changing the time or place of hearing and there will be a reduction in the delays and confusion now occurring when a change in the time or place of hearing is requested. However, the anticipated savings may be offset to some extent by an increase in the number of claimant requests for changes in the time or place or their hearings, as a result of including information about submitting such requests in the notice of hearing. The regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

##### Paperwork Reduction Act

The final regulations impose no new reporting/recordkeeping requirements. Sections 404.936(b) and 416.1436(b)

contain existing reporting requirements which have been approved by OMB. The optional form which can be used for this information collection requirement is the "Appearance at Hearing" form (OMB No. 0960-0280).

#### Regulatory Flexibility Act

We certify in accordance with the Regulatory Flexibility Act that the proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

#### Authority

The final regulations are issued under the authority contained in sections 205, 1102, and 1631 of the Social Security Act, as amended; 49 Stat. 647, 86 Stat. 1475, as amended; 42 U.S.C. 405, 1302, and 1383.

(Catalogue of Federal Domestic Assistance Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805, Social Security Survivor's Insurance; and 13.807, Supplemental Security Income)

#### List of Subjects

##### 29 CFR Part 404

Administrative practice and procedure, death benefits, Disability\* benefits, Old-Age Survivors and Disability Insurance.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

Dated: January 2, 1985.  
Martha A. McSteen,  
Acting Commissioner of Social Security.

Approved: February 8, 1985.  
Margaret M. Heckler,  
Secretary of Health and Human Services.

For the reasons set forth above, Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

#### PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart J is revised to read as follows:

Authority: Sec. 205, and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302, unless otherwise noted).

2. In § 404.936, paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

**§ 404.936 Time and place for a hearing before an administrative law judge.**

(b) If you object to the time or place of the hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraphs (c) and (d) of this section. § 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(c) The administrative law judge will find good cause for changing the time or place of your scheduled hearing, and will reschedule your hearing if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(d) In determining whether good cause exists in circumstances other than those set out in paragraph (c) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(5) Transportation is not readily available for you to travel to the hearing;

(6) You live closer to another hearing site; or

(7) You are unrepresented and illiterate and, as a result, unable to respond to the notice of hearing.

3. Section § 404.938 is revised to read as follows:

**§ 404.938 Notice of a hearing before an administrative law judge.**

After the administrative law judge sets the time and place of the hearing, notice of the hearing will be mailed to the parties at their last known addresses, or given by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. See § 404.936 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

4. In § 404.957, the introductory text of the section is set out for the convenience of the reader and paragraph (b) is revised to read as follows:

**§ 404.957 Dismissal of a request for a hearing before an administrative law judge.**

An administrative law judge may dismiss a request for hearing under any of the following conditions:

(b)(1) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and you have been notified before the time set for the hearing that your request for hearing may be dismissed without further notice if you did not appear at the time and place of hearing, and good cause has not been

found by the administrative law judge for your failure to appear; or

(2) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

**PART 416—[AMENDED]**

5. The authority citation for Part 416, Subpart N is revised to read as follows:

Authority: Secs. 1102, and 1631, and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475 and 1478 (42 U.S.C. 1302, 1363, and 1383b).

6. In § 416.1436, paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

**§ 416.1436 Time and place for a hearing before an administrative law judge.**

(b) If you object to the time or place of the hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraphs (c) and (d) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(c) The administrative law judge will find good cause for changing the time or place of your scheduled hearing and will reschedule your hearing if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(d) In determining whether good cause exists in circumstances other than those set out in paragraph (c) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and

whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

- (1) You have attempted to obtain a representative but need additional time;
- (2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;
- (3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;
- (4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;
- (5) Transportation is not readily available for you to travel to the hearing;
- (6) You live closer to another hearing site; or
- (7) You are unrepresented and illiterate and, as a result, unable to respond to the notice of hearing.

7. Section 416.1438 is revised to read as follows:

**§ 416.1438 Notice of a hearing before an administrative law judge.**

After the administrative law judge sets the time and place of the hearing, notice of the hearing will be mailed to the parties at their last known addresses, or given by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. See § 416.1436 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

8. In § 416.1457, the introductory text of the section is set out for the convenience of the reader and paragraph (b) is revised to read as follows:

**§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.**

An administrative law judge may dismiss a request for hearing under any of the following conditions:

- • • • •
- (b) (1) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and you have been notified before the time set for the hearing that your request for a hearing may be dismissed without further notice if you did not appear at the time and place of hearing, and good cause has not been found by the administrative law judge for your failure to appear; or
- (2) Neither you nor the person you designate to act as your representative appears at the time and place set for the hearing and within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

[FR Doc. 85-12561 Filed 5-23-85; 8:45 am]  
BILLING CODE 4190-11-M

## Food and Drug Administration

### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Nutrius, Inc., providing for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

**SUPPLEMENTARY INFORMATION:** Nutrius, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141, is sponsor of a supplement to NADA 98-639 submitted on its behalf by Elanco Products Co. The supplement provides

for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibronic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA was previously approved for the manufacture of premixes containing 5 or 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The supplemental NADA is approved and the regulation are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

#### § 558.630 [Amended]

2. In § 558.630 Tylosin and sulfamethazine by removing No.

"051359" in paragraphs (b)(3) and (b)(9) and by inserting No. "051359" in paragraph (b)(10).

Dated: May 17, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-12535 Filed 5-23-85; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Moorman Manufacturing Co. providing for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

**SUPPLEMENTARY INFORMATION:** Moorman Manufacturing Co., Quincy, IL 62301, is the sponsor of a supplement to NADA 111-069 submitted on its behalf by Elanco Products Co. The supplemental NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds will be used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibronic), and control swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and

information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (April 28, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b), 21 CFR 5.10 and 5.83.

2. In § 558.630 by revising paragraph (b)(7) to read as follows:

#### § 558.630 Tylosin and sulfamethazine.

(b) \* \* \*

(7) To 021930: 2 grams per pound each, paragraph (f)(2)(i) of this section; 5, 10, 20, or 40 grams per pound each, paragraph (f)(2)(ii) of this section.

Dated: May 17, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-12536 Filed 5-23-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[T.D. ATF-204; Re: Notice No. 472]

#### Establishment of the Northern Sonoma Viticultural Area

##### Correction

In the issue of Friday, May 17, 1985, in the document beginning on page 20560, in the third column, make the following corrections:

1. On page 20562, in the third column, in § 9.70(c)(21), in the second line, "Southeasterly" should read "Southerly".

2. On page 20562, in the third column, in § 9.70(c)(22), in the second line, "Southerly" should read "Southeasterly"; and in the third line "2 3/4" should read "4 3/4".

3. On page 20562, in the third column, in the file line at the end of the document, the FR Doc. line should read "FR Doc. 85-11899".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 915

#### Permanent Program Amendment From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

**SUMMARY:** OSM is announcing the approval of certain amendments to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On January 31, 1985, and February 5, 1985, Iowa submitted proposed program amendments pertaining to the assessment of civil penalties, including a penalty point assessment schedule, and bond amount determination.

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the Iowa program amendments.

The Federal rules at 30 CFR Part 915 which codify decisions on the Iowa program are being amended to implement these sections.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard D. Rieke, Director, Kansas City Field Office, Office of Surface Mining, Professional Building, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's finding, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program and may be found in the January 21, 1981 Federal Register.

**II. Discussion of Amendments**

OSM published a notice of the Federal Register on April 4, 1985, announcing receipt of the Iowa amendments and inviting public comments on the adequacy of the proposals (50 FR 13388). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on May 6, 1985, and no comments were received.

By letters dated January 31, 1985 and February 5, 1985, Iowa submitted proposed program amendments consisting of:

1. An amendment to Iowa Code 83.15 concerning civil penalties, that provides for timely assessment of permit violations and for collection of assessment penalties. It establishes general criteria for determining the amount of the penalty, and provides for an additional penalty of not less than \$750 per day whenever a violation has not been abated within the required abatement period. The statute provides for an informal conference to review the recommended penalty.

The statute also provides that the State attorney general shall institute civil action in the district court for assessment of a civil penalty. The amendment strengthens Iowa's civil penalty assessment and collection procedures. This statute is also known as House File 531;

2. An amendment establishing a new Iowa rule 780-4.6(83) "Penalty Schedule." This rule establishes a schedule by which the Iowa Department of Soil Conservation (DSC) will assign

points for assessing penalties. The authority for this schedule was established in the amendment above, and

3. An amendment to the Iowa program concerning the method used to calculate bond amounts. Iowa is proposing to use 780-4.42(1)(83) of its approved program. At the same time the State is withdrawing its request for consideration of a \$10,000 per acre bonding maximum as well as the proposed six-point methodology for determining per acre bonding amounts, which were found to be inconsistent with SMCRA and disapproved by the Director, OSM, on December 7, 1984 (49 FR 47834). The proposal to use 780-4.42(1)(83) to calculate bond amounts was submitted to satisfy the required amendment in 30 CFR 915.16. The required amendment was announced in the December 7, 1984 Federal Register and the date by which the State had to respond was February 5, 1985 (49 FR 47834). Iowa submitted its proposal to use 780-4.42(1)(83) to calculate bond amounts on February 5, 1985.

**III. Director's Findings**

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Iowa on January 31, 1985, and February 5, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below.

Code of Iowa, 1983, Chapter 83, Section 15 (House File 531), was amended to provide that civil penalties shall be assessed if a violation results in a cessation order. The penalty would be judicially imposed with the Iowa DSC making a recommendation on the amount. A person is provided with an opportunity to submit information regarding the amount of the penalty. The statute also provides that a person may consent to the recommended penalty by payment. The Director finds the requirements at Chapter 83, Section 15 consistent with 30 CFR 845.13, 845.15, and 845.17.

Iowa Administrative Code 780-4.61(83) is amended by setting forth a penalty schedule. The penalty schedule established by rule 780-4.61(83) establishes a point system for determining the amount of a civil penalty that closely follows the penalty schedule established in 30 CFR 845.13. Points are assigned on the basis of history of previous violations, seriousness of the violation, negligence and good faith attempts to achieve compliance. IAC 780-4.61(83) is, therefore, consistent with the Federal

regulations at 30 CFR 845.13, and 845.14.

Iowa Administrative Code 780-4.42(83) sets forth the procedures the DSC uses to determine the amount and duration of performance bonds. The DSC will require a bond amount that is equal to the estimated cost to the department if it had to perform the reclamation, restoration and abatement work required of the permittee. The estimated costs include but are not limited to the estimated costs submitted by the permittee; costs for public contracting of the work, and an amount equal to cost changes over time for reclamation activities. Therefore, the Director finds IAC 780-4.42(83) no less effective than the Federal regulations at 30 CFR 800.14, and satisfies the required amendment imposed at 30 CFR 915.16.

**IV. Public Comments**

No public comments were received in response to the announcement for receipt of the amendments.

**V. Director's Decision**

The Director, based on the above findings, is approving the January 31, and February 5, 1985 amendments. The Director is amending Part 915 of 30 CFR Chapter VII to reflect approval of the State program amendments and removal of the required amendment.

**VI. Procedural Requirements**

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12921 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

#### List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

#### PART 915—IOWA

30 CFR Part 915 is amended as follows:

1. The authority citation for Part 915 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 915.15 is amended by adding a new paragraph (b) as follows:

#### § 915.15 Approval of regulatory program amendments.

(b) The following amendments submitted to OSM on January 31, 1985 and February 5, 1985, are approved effective May 24, 1985: Code of Iowa, 1983, Chapter 83, Section 15; IAC 780-4.6 (83), and 780-4.42(1)(83).

#### § 915.16 [Removed]

3. 30 CFR Part 915 is amended by removing § 915.16.

[FR Doc. 85-12563 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-05-M

#### DEPARTMENT OF DEFENSE

##### Department of the Navy

#### 32 CFR Part 706

#### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Arthur W. Radford

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ARTHUR W. RADFORD (DD 968) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** May 10, 1985.

**FOR FURTHER INFORMATION CONTACT:** Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ARTHUR W. RADFORD (DD 968) is a vessel of the

Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

#### § 706.2 [Amended]

1. The authority citation for Part 706 continues to read as follows:

Authority: Executive Order 11964; 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than 1/3 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS ARTHUR W. RADFORD.	DD 968						x	x	46.4

Dated: May 10, 1985.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-12601 Filed 5-23-85; 8:45 am]

BILLING CODE 3810-AE-M

#### 32 CFR Part 706

#### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Carr

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

**SUMMARY:** The Department of the Navy

is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CARR (FFG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without

interfering with its special function as a naval frigate. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** May 10, 1985.

**FOR FURTHER INFORMATION CONTACT:** Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CARR (FFG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), regarding the arc of visibility of its forward masthead light; Annex I, section 2(a)(i), regarding the height above the hull of its forward masthead light; and Annex I, section 3(b), regarding the horizontal relationship of its side lights to its forward masthead light, without interfering with its special function as a naval frigate. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS CARR (FFG 52) is a member of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to this ship.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

#### § 706.2 (Amended)

1. The authority citation for Part 706 continues to read as follows:

Authority: Executive Order 11964; 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, Section 2(a)(i), Annex I
USS CARR	FFG 52	1.6

3. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

On the following ship the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head:

USS CARR..... FFG 52

4. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Slide lights on the following ship do not comply with Annex I, section 3(b):

Vessel	Number	Distance of side lights forward of masthead lights in meters
USS CARR	FFG 52	2.75

Dated May 10, 1985.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-12600 Filed 5-23-85; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6505

[1-8856]

#### Idaho; Public Land Order No. 6586; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order will correct an error in the land description of Public Land Order No. 6586 of February 7, 1985.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Larry Lievsay, BLM Idaho State Office,

3380 Americana Terrace, Boise, Idaho 83708, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6586 of January 31, 1985, in FR Doc. 85-3050, published at page 5262, in the issue of February 7, 1985, is corrected as follows:

On page 5262, under T. 5 S., R. 3 W., the line reading "sec. 8, lots 11, 12, 29-59, 63-86, 91-96, 99, 100, 106-110" is corrected to read, "sec. 6, lots 11, 12, 29-59, 63-86, 89, 91-96, 100, 106-110." May 17, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-12618 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-64-M

#### 43 CFR Public Land Order 6605

[C-020027]

#### Colorado; Modification of Public Land Order No. 1637

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order modifies a public land order insofar as it affects 160 acres of national forest land to permit consummation of an exchange. The land was withdrawn for the Forest Service for protection of a campground site. The land remains closed to other forms of surface entry and mining, but has been and remains open to mineral leasing.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Tate, BLM Colorado State Office, 2020 Arapahoe Street, Denver, CO 80205, 303-294-7626

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1637, dated May 22, 1958, is hereby modified insofar as it affects the following described land to permit consummation of an exchange by the Forest Service.

Sixth Principal Meridian Arapaho National Forest Tabernash Campground

T. 1 N., R. 76 W.,  
Sec. 32, NE¼.

The area described contains 160 acres in Grand County.

2. Effective immediately, the land is opened to applications for disposal of

the lands under the General Exchange Act of March 20, 1922, 43 Stat. 465, as amended, 16 U.S.C. 485, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

May 17, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-12627 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-84-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 84-31; RM-4515, RM-4607]

### FM Broadcast Stations in Miami, Montgomery and Kermit, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein substitutes Class B FM Channel 297 for Channel 296A at Miami, West Virginia, and modifies the license of Station WVCN(FM) to specify the new channel, at the request of Boone Broadcasting Co. The allotment could provide Miami with its first wide-area coverage FM station. The Motion for Stay filed by Knott County Broadcasting Corporation is denied.

**EFFECTIVE DATE:** June 20, 1985.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Miami, Montgomery and Kermit, West Virginia); MM Docket No. 84-31, RM-4515, RM-4607.

Adopted: May 6, 1985.

Released: May 14, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 4525, published February 7, 1984, which alternatively proposed: (1) The assignment of Class B FM Channel 297 to Miami, West Virginia, at the request of Boone Broadcasting Co. ("Boone"); or (2) the assignment of Class B Channel 298 to Kermit, West Virginia, at the request of

David Blankenship ("Blankenship"). We also proposed to modify Boone's permit for Station WVCN(FM) at Miami to specify operation on Channel 297, if assigned, in lieu of its current channel, Channel 296A. Regardless of which community might receive the Class B allocation, we also stated our intention to amend the FM Table of Allotments to reflect the actual usage of Station WVCN at Miami instead of at Montgomery, West Virginia, where it is currently allocated. Comments have been received from Boone and Blankenship<sup>1</sup> and reply comments were filed by Harvit Broadcasting Corp. ("Harvit") and WDOC, Inc. ("WDOC"). Additionally, Knott County Broadcasting Corporation ("Knott County") filed a Motion for Stay pending consideration of its Application for Review concerning the assignment of Channel 297C2 to Hindman, Kentucky.

2. We will first deal with the Motion for Stay filed by Knott County. Knott County objects to the finalization of either the Kermit or Miami proposals before consideration of its Application for Review. As the licensee of FM Station WKCB, Channel 296A, at Hindman, Kentucky, it seeks the assignment of Channel 297C2, under the new rules adopted in BC Docket 80-90<sup>2</sup>, and the simultaneous modification of its license to specify operation on the new channel. To this end, it submitted a petition for rule making requesting the channel change and license modification. The petition was submitted on September 21, 1983, prior to the effectiveness of the new rules. The Commission returned its request on September 30, 1983, as premature. In response to that action, Knott County filed: (1) An Application for Review; (2) a Supplement to its Application for Review; and (3) a Petition for Remand. These pleadings were considered by the Commission on March 1, 1984, in connection with its action on reconsideration of BC Docket 80-90 and denied. On August 29, 1984, Knott County filed another Application for Review of these denials. Separately, it also filed a Motion for Stay requesting the Commission hold in abeyance any

decision in this proceeding pending action on its Application for Review.

3. Our rules provide parties the right to seek review by the full Commission of actions which are taken by the staff under delegated authority. Knott County sought such review by its Application for Review filed October 17, 1983. This request was denied in the Docket 80-90 reconsideration Order. See fn. 2, *supra*. What Knott County now seeks is a second review of the Commission's earlier decision on its Application for Review. Knott County does not present any data or arguments which have not already been fully considered by the Commission. It merely reiterates its previously filed contentions but argues that the Commission improperly included its Application for Review among the other reconsideration requests in Docket 80-90.

4. The Commission has the discretion to consider pleadings in conjunction with what it determines to be the proper proceeding, even though the pleading may not be specifically so directed by the petitioner. Without the ability to exercise this discretion, the Commission would be unable to consider like requests in an expeditious and orderly fashion. It is this ability to consider all relevant pleadings which enables the Commission to ensure the administrative finality of its determinations. In this case, Knott County's petition for rule making seeking the assignment of Channel 297C2 to Hindman was filed pursuant to rules adopted in Docket 80-90. Likewise, our letter of September 30 was based on the decisions made in the proceeding. Specifically, it was mandated by our statement, at paragraph 83 of the *Report and Order* in Docket 80-90 that:

Before the effective date of the new rules, any petitions or applications that do not conform to the 'old rules' will be returned.

Knott County's request was therefore properly considered in the *Memorandum Opinion and Order* in Docket 80-90. Further, Knott County's August 29 Application for Review does not now lie before the Commission as we have already provided it with the administrative review to which it is entitled and there remains no further administrative process to provide review. We find that the pleading entitled "Application for Review" is not acceptable and as such is dismissed.

5. Knott County, in its Motion for Stay, states that it has just learned of the existence of the Miami-Kermit rule making. It further states that it has now ordered copies of all the papers filed in this proceeding so that they may be

<sup>1</sup> On March 8, 1985, Blankenship submitted a letter withdrawing his support for a Kermit allocation. No other comments in support of the allotment were received. Therefore, in accordance with Commission policy, his request will be dismissed without further consideration. The comments of Harvit and WDOC pertained solely to the Kermit allocation and as such need not be discussed.

<sup>2</sup> *Report and Order*, 94 F.C.C. 2d 152 (1983), *recons.* 97 F.C.C. 2d 279 (1984). Among the new rules adopted, the Commission authorized three new classes of stations, these being B1, C1 and C2.

reviewed by its engineering counsel. However, it feels that if either petition is granted the use of Channel 297C2 at Hindman would be forever precluded. Therefore, it requests that action be stayed until the Hindman proposal is considered to avoid creating irreparable injury.

6. We do not believe that Knott County has presented us with any compelling reason to stay action in this proceeding. Both the Miami and Kermit petitions were filed prior to the effective date of the new Docket 80-90 rules and were accepted for consideration as they met all the technical requirements then in effect. On January 13, 1984, the Commission issued the *Notice* herein and requested comments and counterproposals by March 23, 1984, after the effective date of the new allocation rules. With the exercise of reasonable diligence, we feel that Knott County could have filed timely comments or a counterproposal for Channel 297C2 at Hindman. Finally, although Knott County states that it would be irreparably injured were we to finalize the allocations proposed here, we have not been provided with any evidence that Channel 297C2 is anything more than its preferred choice of channel. No engineering study has been submitted showing that this is the only Class C2 channel which could be allocated to Hindman. Therefore, its Motion for Stay is denied.

7. In the *Notice*, Boone was requested to provide the Commission with economic, demographic and other pertinent data to support its request for a wide-coverage area FM allocation at Miami. Boone states that Miami is located in Kanawha County (population 231,414, 1980 U.S. Census), near the heart of a heavily populated area. It states that Miami has a population of 500 persons<sup>2</sup> and that its minor civil division contains 48,893 persons.<sup>4</sup> According to Boone, the 1 mV/m contour of a Class B station would serve an area containing 390,082 persons. The largest community within this area is Charleston, West Virginia, with a population of approximately 64,000 persons. The remaining 326,000 persons, according to Boone, live in small, widely dispersed communities.

8. Boone states that its principals are long-time residents of the area and are intimately familiar with the problems of the area's residents. It further states that Miami's surrounding area contains no

radio or television stations or print media. Consequently, it claims that there is not local media addressing its needs. It concludes that a wide-coverage area radio station will unify the area's scattered population, address on-going problems, and aid in community-based solutions to these problems.

9. We believe the public interest would benefit from the substitution of Class B Channel 297 for Channel 296A at Miami, since it could provide wide-coverage service to the area. Channel 297 can be allocated to Miami in conformance with the Commission's minimum distance separation requirements. Further, in view of the fact that no other party expressed an interest in the allocation, we will modify the license of Station WVCN(FM) to specify the higher class channel. See, *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976) and *Modification of FM and TV Licenses*, 49 FR 34007, published August 28, 1984.

10. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered that effective June 20, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Miami, West Virginia	297
Montgomery, West Virginia	

11. It is further ordered, that pursuant to section 316(a) of Communications Act of 1934, as amended, the license of Boone Broadcasting Co. for Station WVCN(FM), Miami, West Virginia, IS MODIFIED to specify operation on Class B Channel 297 in lieu of Channel 296A at Miami, West Virginia, subject to the following conditions:

(a) At least 30 days before operating on Channel 297, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

12. It is further ordered, that the Secretary shall send a copy of this Report and Order by certified mail, return receipt requested, to:

Boone Broadcasting Co., Station WVCN (FM), #1 Broadcast Place, Madison, West Virginia 25130

Knott County Broadcasting Corporation, c/o Law Office of Lauren A. Colby, 532 Pearl Street, Frederick, Maryland 27101

William D. Silva, Esq., Counsel to Boone Broadcasting Co., Bilger & Blair, 1825 K Street, NW., Washington, D.C. 20006

13. It is further ordered, that the petition of David Blankenship requesting the allocation of Channel 298 to Kermit, West Virginia, is dismissed.

14. It is further ordered, that the Motion for Stay filed by Knott County Broadcasting Corporation is denied.

15. It is further ordered, that this proceeding is terminated.

16. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission,  
Charles Schott,  
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-12526 Filed 5-23-85; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 80

#### Rule Implementing Amendments to the Federal Aid in Sport Fish Restoration Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** This final rule implements amendments to the Federal Aid in Sport Fish Restoration Act contained in Pub. L. 98-369. The Federal Aid in Sport Fish Restoration Act provides funds to States for the restoration, conservation, management, and enhancement of sport fish and the provision for public use and benefits from these resources. This rule seeks to clarify legal requirements and to establish integrated policies necessary for implementation of the legislative amendments.

**EFFECTIVE DATE:** June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** James R. Fielding, Acting Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235-1526.

**SUPPLEMENTARY INFORMATION:** Section 1014 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended the Federal

<sup>2</sup> Rand McNally Green Guide, 1983.

<sup>4</sup> Summary Characteristics for Governmental Units and Standard Metropolitan Statistical Areas, West Virginia, PHC 80-3-50 W.V. 1980, Census of Population and Housing, Issued October 1982.

Aid in Sport Fish Restoration Act, commonly known as the Dingell-Johnson or D-J Act, that was enacted on August 9, 1950 (64 Stat. 430; 16 U.S.C. 777-777k). The new law required regulatory changes to accommodate several provisions including: (a) The States must allocate 10 percent of their D-J apportionment for recreational boating access facilities; (b) the States may use up to 10 percent of their D-J apportionment for an aquatic resources education program; (c) the States must use their additional D-J funds to expand their fishery management programs; (d) the District of Columbia will be allowed to participate in the grant program; (e) coastal States must equitably allocate new funds between fresh and saltwater activities; (f) the States will be permitted to enter multiyear financial agreements.

This rule serves almost entirely to interpret, clarify, and consolidate requirements imposed by Pub. L. 98-369. Further, it has been determined that this rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not contain any new recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

Proposed rulemaking was published in the Federal Register of December 4, 1984 (49 FR 47420-21), and invited comments for 30 days ending January 3, 1985. Comments were received from 54 sources including State fish and wildlife agencies, interstate fisheries commissions, nongovernmental conservation groups, and private citizens. The following is a summary of the major comments received and our response to each.

1. Comment. Most of the comments on § 80.5 Eligible undertakings dealt with the need for greater clarification as to how the Fish and Wildlife Service intends to implement the maintenance of effort provision.

Response. Before the expanded funds from the new revenue sources added by Deficit Reduction Act are apportioned, States will be provided instructions to furnish a base funding level for FY 1984 or an average of up to three of the most recent fiscal years. The base figure adjusted for inflation will be used for comparison with future year State sport

fish program expenditures. Other factors that would be considered in adjusting the base include, but are not limited to, long term trends in fishing license revenues. Thereafter, States will be asked to furnish such figures only if the Service has an indication that there is noncompliance with § 80.5(c).

2. Comment. Two States requested clarification as to what would constitute "new" work in the context of proposed § 80.5(c).

Response. As required by new § 80.5(b)(2), a State would be permitted to use the additional funds provided from the Aquatic Resources Trust Fund on existing activities provided the State's entire sport fishing program expands in excess of its "base", as adjusted for inflation, and at least by an amount equal to the infusion of new Trust Fund monies.

3. Comment. One State requested that the word "annually" be inserted between "available" and "from traditional sources" in proposed § 80.5(c).

Response. We believe that this should be the intent of this provision. However, since some States are funded through biennial budget authority, this insertion may impose an undue hardship, and therefore is not added.

4. Comment. One State requested that a 1-year lead-in be permitted to allow development of actual program expansion.

Response. By allowing 1984 to be used as a base and by not imposing this regulation until new funds become available in FY 86, we are, in effect, allowing FY 85 to be used as a lead-in period.

5. Comment. One commenter stated that FWS should also limit its use of new funds for administrative purposes to new or expanded efforts.

Response. The policy of the FWS on the use of administrative funds continues to be to use these funds conservatively and sparingly, thereby maximizing annual apportionments to States. Also, the 1984 amendments reduced administrative funds from a maximum of 8 percent to 6 percent.

6. Comment. The majority of aquatic resource education comments involved clarification of what activities would be permitted under an eligible aquatic resource education program.

Response. Guidance to the States will be provided in the Federal Aid Manual early in July. Generally a State must plan and organize its program to meet State needs. The overall program should be broad in scope to increase the public and resource users' understanding and responsibility toward the Nation's water resources, and associated aquatic life

forms, i.e., aquatic plants, fish food organisms, fish, etc., other users, and landowners. Components of the program may be much more limited in scope to appeal to specific groups if a State's determined need for such units exist. Regarding comments that addressed boating safety instruction specifically, the Service's position is to permit States to provide safety instruction to the public as part of an overall aquatic resource education program. However, programs that duplicate substantially U.S. Coast Guard or State boating safety courses authorized under section 1012 of Pub. L. 98-369 will be disallowed.

7. Comment. One State wanted clarification concerning the 10 percent for aquatic resource education.

Response. Section 80.15(e) is clear, obligations for aquatic education projects approved under Federal Aid to Sport Fish Restoration Act, as amended, cannot exceed 10 percent of the State's annual apportionment.

8. Comment. Several States wanted clarification on how FWS proposes to administer the equitable distribution of new funds between freshwater and saltwater sport fish benefits as provided in proposed § 80.22 (adopted as § 80.23).

Response. The law states that "[e]ach coastal State, to the extent practicable, shall equitably allocate the [new revenues] between marine fish projects and freshwater fish projects in the same proportion as the *estimated* number of resident marine anglers and the *estimated* number of resident freshwater anglers respectively, bear to the *estimated* number of all resident anglers in that State." [Emphasis added]. States will be advised either to provide the Service a statistically reliable estimate of its resident and marine anglers or to indicate acceptance of the estimate made from the latest National Survey of Hunting, Fishing and Wildlife-Associated Recreation. The apportionments of D-J funds to the States will provide for the coastal States the funds from new revenue sources for marine and for freshwater projects according to these estimates. Subsequently, if the amounts obligated for fresh or saltwater projects are equal to or greater than the amount apportioned for each, the State has met the requirement. If a State appears to be deficient in either, the State will be contacted to determine why it was not practical to obligate the revenues proportionately and if a problem is found to exist, counseled to correct the deficiency within the next 1 or 2 years. If over a 3-year period the deficiency remains, the Service will limit D-J project approval to assure an

unobligated balance sufficient to provide for the deficiency. The result will be a reversion if not corrected in time. This will be set forth in the Federal Aid Manual.

9. Comment. Some commenters, in an effort to encourage States to require saltwater fishing licenses, would like to see the freshwater/saltwater split based on fishing licenses sold in each sector.

Response. The law requires that coastal States equitably allocate new funds based on the estimated number of the State's resident marine and freshwater anglers, not on licenses sold.

10. Comment. One State asked for a determination of resident angler.

Response. A resident angler is one who fishes within the same State where legal residence is maintained. This definition has been added.

11. Comment. One State wanted clarification that the equitable distribution between freshwater/saltwater project applies to "new" funds only.

Response. The regulation (§ 80.23) states that this provision applies to "those funds specified by the Secretary". The FWS, when making apportionments to coastal States, will designate "new" funds and total funds. Only the "new" funds will be subject to the equitable distribution limitation.

12. Comment. One State would like affirmation that funds spent for ongoing marine projects could be applied against the freshwater/saltwater equitable distribution allocation.

Response. Ongoing marine project costs can be applied toward the State's saltwater allocation. Regulation § 80.23(a)(3) has been modified to reflect this.

13. Comment. One commenter suggested the following word changes to § 80.23(a)(4): "Failure to provide for an equitable allocation may result in the State becoming ineligible to participate in the use of those funds specified until such time as the State demonstrates to the satisfaction of the Director that funds will be allocated equitably."

Response. This change has been incorporated.

14. Comment. Several States offered comments that dealt with how the Fish and Wildlife Service proposes to administer the boating access provisions.

Response. New regulation § 80.24 clearly indicates how the Fish and Wildlife Service will administer the boating access provisions. Each State and territory shall use at least 10 percent of its total annual D-J apportionment for boating access facilities that can accommodate power boats. As specified in Pub. L. 98-369,

any portion of the 10 percent set aside for this purpose that remains unexpended or unobligated after 2 years shall revert to FWS.

15. Comment. One State wanted to know if maintenance on an existing motorboat access facility would be permitted under the 10 percent set aside provision.

Response. This would be permissible. If funding for this purpose does not supplant the adjusted base funds of a State, Regulation § 80.24 has been modified to so indicate.

16. Comment. One State would like a definition of "common horsepower."

Response. This is defined as any size motor that can be reasonably accommodated on the body of water slated for development. In addition, States must make every effort not to exclude powerboats with larger horsepower ratings if they reasonably will not conflict with aquatic resources management. A definition of common horsepower has been added.

17. Comment. One State suggested that outboard motor size determination be the responsibility of the States on an area-by-area basis with safety being the prime objective.

Response. We accept this interpretation provided that States do not invoke capriciously the factor to discriminate against larger motorboat users.

18. Comment. One State proposed that the 10 percent boating facility allocations apply only to the "new" revenues.

Response. Pub. L. 98-369 is specific that the percentage be applied to all D-J funds apportioned annually under Section 4 of the Act.

19. Comment. One State noted that the 10 percent set aside for boating facilities should be tied to the continued availability of motorboat fuel taxes.

Response. The law does not, so qualify the 10 percent set aside.

20. Comment. One commenter asked if a State could use more than the designated 10 percent for boating access facilities.

Response. The State may exceed the 10 percent minimum set aside for boating access, and the regulation (§ 80.24) requires that "at least 10 percent" shall be allocated.

21. Comment. Two States requested that interest payments be an allowable cost under the multiyear financing provision.

Response. OMB Circular A-87 section D.7 expressly designates interest as an unallowable cost.

22. Comment. One State proposed insertion of "including water rights" in the multiyear financing authority.

Response. This change has been made.

23. Comment. One commenter suggested for clarification the following language change in § 80.25(b)(2): "In the event the project is not completed, those Federal funds expended but not resulting in sport fishery benefits must be recovered by the State and reallocated to approved State sport fish projects."

Response. This wording change has been made.

24. Comment. Several States suggested that, with the advent of increased funding, the Federal Aid fish stocking policy, particularly in regard to fish hatchery construction, be revised to accommodate greater flexibility in State sport fish management.

Response. The FWS is reviewing the Federal Aid fish stocking policy and expects to have a new policy in effect by October 1, 1985, that will be agreeable to most States.

25. Comment. Three commenters would like to see greater use of Federal Aid in Sport Fish Restoration administrative funds for support of interstate fishing commission activities.

Response. The Deficit Reduction Act amendments, while increasing the total funds available for this program, decreased the percentage available for administration from 8 percent to 6 percent. The guidance for use of these funds will be reviewed and revised later this fiscal year.

In addition to the changes made as a result of comments received, internal review indicated that the numbering sequence of the proposed rule deleted § 80.24. The numbering in the Final Rule has been modified to correct this.

The principal author of this rule is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703/235-1526.

#### List of Subjects in 50 CFR Part 80

Fish grant programs, Natural resources, Grant administration, Wildlife.

#### PART 80—[AMENDED]

Accordingly, 50 CFR Part 80 is amended as follows:

1. The authority citation for Part 80 continues to read as follows:

Authority: Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i), as amended, and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i), as amended.

2. In § 80.1, paragraph (b) is revised and paragraphs (k) and (l) are added to read as follows:

**§ 80.1 Definitions.**

(b) *State*. Any State of the United States; the territorial areas of Guam, the Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

(k) *Resident angler*. A resident angler is one who fishes within the same State where legal residence is maintained.

(l) *Common horsepower*. Common horsepower is defined as any size motor that can be reasonably accommodated on the body of water slated for development.

3. In § 80.2, paragraph (a) is revised to read as follows:

**§ 80.2 Eligibility.**

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

4. In § 80.5, paragraph (b) is revised to read as follows:

**§ 80.5 Eligible undertakings.**

(b) Federal Aid in Sport Fish Restoration Act.

(1) Projects having as their purpose the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation.

(2) Additional funds resulting from expansion of the Sport Fish Restoration Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor.

5. Section 80.15 is amended by adding paragraph (e) to read as follows:

**§ 80.15 Allowable costs.**

(e) Not more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may be obligated on projects for aquatic education.

6. A new § 80.23 is added to read as follows:

**§ 80.23 Allocation of funds between marine and freshwater fishery projects.**

(a) Each coastal State, to the extent practicable, shall equitably allocate those funds specified by the Secretary, in the apportionment of Federal Aid in Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) The allocation and subsequent obligation of funds between projects that benefit marine and freshwater interests will be in the same proportion as the estimated number of resident marine anglers and resident freshwater anglers, respectively, bears to the estimated number of total resident anglers in the State. The number of marine and freshwater anglers shall be based on a statistically reliable method for determining the relative distribution of resident anglers in the State between those that fish in saltwater and those that fish in freshwater.

(3) To the extent practicable means that the amounts allocated of each year's apportionment may not necessarily result in an equitable allocation for each year. However, the amounts allocated over a period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects. Ongoing marine project costs can be applied toward the State's saltwater allocation.

(4) Failure to provide for an equitable allocation may result in the State's becoming ineligible to participate in the use of those funds specified, until such time as the State demonstrates to the satisfaction of the Director that funds will be allocated equitably.

7. A new § 80.24 is added to read as follows:

**§ 80.24 Recreational boating access facilities.**

The State shall allocate at least 10 per centum of each annual apportionment under Federal Aid in Sport Fish Restoration Act for recreational boating access facilities. All facilities constructed, acquired, developed, renovated, or maintained

(including those existing structures for which maintenance is provided) must be for the purpose of providing additional, improved, or safer access of public waters for boating recreation as part of the State's effort for the restoration, management, and public use of sport fish. Though a broad range of access facilities and associated amenities can qualify for funding under the 10 percent provision, power boats with common horsepower ratings must be accommodated, and, in addition, the State must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of the 10 percent set aside for the above purposes that remains unexpended or unobligated after two years shall revert to FWS.

8. A new § 80.25 is added to read as follows:

**§ 80.25 Multiyear financing under the Federal Aid in Sport Fish Restoration Program.**

(a) States may finance the acquisition of lands or interests in lands including water rights and the construction of structures and facilities utilizing multiyear funding as authorized by the Federal Aid in Sport Fish Restoration Act in two ways:

(1) States may finance the entire cost of the acquisition or construction from a non-Federal funding source and claim Federal Aid reimbursement in succeeding apportionment years according to a scheduled reimbursement plan.

(2) States may negotiate an installment purchase or contract whereby periodic and specified amounts are paid to the seller or contractor and Federal Aid reimbursements are allowed for each payment from any apportionment year current at the time of payment.

(b) Multiyear financing is subject to the following conditions:

(1) Projects must provide for prospective use of funds and be approved by the Regional Director in advance of the State's obligation or commitment to purchase property or contract for structures or facilities.

(2) States must agree to complete the project even if Federal funds are not available. In the event the project is not completed, those Federal funds expended but not resulting in commensurate sport fishery benefits must be recovered by the State and reallocated to approved State sport fish projects.

(3) Project proposals must include a complete schedule of payments to complete the project.

(4) No costs for interest or financing shall be claimed for reimbursement.

Dated: April 2, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-12446 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 661

[Docket No. 50458-5058]

### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of modification of closure.

**SUMMARY:** This notice announces reopening of the non-Indian commercial salmon fishery in the fishery conservation zone (FCZ) between the U.S.-Canada border and Cape Falcon, Oregon, from 0001 hours, May 21, 1985, through 2400 hours, May 31, 1985, unless the quota is reached earlier. This action is necessary to allow the unused portion of the salmon harvest quota for the area to be taken.

**EFFECTIVE DATES:** Reopening of the FCZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective from 0001 hours Pacific Daylight Time (PDT), May 21, 1985, through 2400 hours PDT, May 31, 1985.

**ADDRESS:** Data and other information relevant to this notice have been

compiled in aggregate form and are available for public review at 7600 Sand Point Way, Building 1, Seattle, Washington, from 8:00 a.m. to 4:30 p.m. weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Rolland A. Schmitt (Director, Northwest Region, NMFS), 206-526-6150.

**SUPPLEMENTARY INFORMATION:** The regulations implementing the framework amendment for the ocean salmon fisheries provide at § 661.21(a)(2) that if a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the fishery will be reopened for all or part of the remaining original season by publishing a notice in the Federal Register if the reopening is consistent with management objectives for the affected species and the additional open period is no less than 24 hours.

The regularly scheduled May season for all salmon species except coho for the commercial troll salmon fishery in the FCZ between the U.S.-Canada border and Cape Falcon, Oregon, for 1985 was originally established as May 1 through the earliest of May 31 or attainment of a quota of 27,000 chinook (50 FR 18674, May 2, 1985). In accordance with § 661.21(a)(1) of the regulations implementing the framework amendment, the May non-Indian commercial salmon fishery in the FCZ between the U.S.-Canada border and Cape Falcon, Oregon, was closed effective midnight, May 14, 1985 (50 FR 20570, May 17, 1985), based on attainment of the quota. The closure was based on the best information available at the time on catch and effort supplied by the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW) which projected that the non-Indian commercial fishery would reach the quota of 27,000 chinook salmon by May 14, 1985.

Following the closure of the fishery, the actual catch was determined to be about 17,000 chinook salmon based on actual landing data, which is 10,000 fish less than the quota. This shortfall is sufficient to allow as much as 11 days of fishing for the remaining portion of the quota based on the best information available concerning expected catch and effort. This reopening is consistent with the management objectives for the chinook and coho stocks in the area. Therefore, the Secretary of Commerce issues this notice to modify the May 14, 1985, closure of the May non-Indian commercial fishery for all salmon species other than coho between the U.S.-Canada border and Cape Falcon, Oregon, by reopening the fishery from 0001 hours PDT, May 21, 1985, through 2400 hours PDT, May 31, 1985. If the quota is reached earlier, this fishery will be closed by notice.

This action has been taken in consultation with the Directors of WDF and ODFW and with the Chairman of the Pacific Fishery Management Council. The Directors of WDF and ODFW have confirmed that Washington and Oregon will reopen the non-Indian commercial fishery in State waters adjacent to the relevant area of the FCZ for the same period this action reopens the FCZ.

#### Other Matters

This action is taken under the authority of § 661.23 and complies with Executive Order 12291.

#### List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: May 21, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-12622 Filed 5-21-85; 4:17 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 50, No. 101

Friday, May 24, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

#### 10 CFR Part 430

[Docket No. CE-CP-SPRM-MI033, HI034]

### Energy Conservation Program for Consumer Products; State Petitions for Exemption From Federal Preemption of State Standards for Water Heaters, Furnaces, Clothes Dryers, and Kitchen Ranges and Ovens

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Notice of proposed rulemakings and public hearing.

**SUMMARY:** The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, requires that the Department of Energy prescribe an energy efficiency standard for each of 13 major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

On August 30, 1983, DOE published a final rule with respect to water heaters, furnaces and four other products, in which, for both water heaters and furnaces, DOE determined that an energy efficiency standard would not result in a significant conservation of energy and would not be economically justified.

DOE has received petitions from two States, Michigan and Hawaii, requesting, in each case, that State regulations pertaining to the energy use or energy efficiency of certain appliances be exempted from Federal preemption. The petition from the State of Michigan, submitted December 28, 1984, requests that the State energy efficiency standards requiring intermittent ignition devices (IIDs) for clothes dryers, furnaces and kitchen ranges and ovens be exempted from

Federal preemption. Hawaii's petition, submitted September 7, 1984, requests exemption from Federal preemption for the State's regulation prohibiting the sale and installation of water heaters that do not meet a prescribed efficiency level.

The purpose of this notice of proposed rulemakings is to provide interested persons the opportunity to comment on the proposed rules and to invite interested persons to participate in the rulemaking process.

**DATES:** Requests to speak at the public hearing must be received by the Department by July 8, 1985. Statements to be presented at the public hearing must be received by the Department by July 10, 1985. Written comments on the proposed rule must be received by the Department by August 22, 1985.

Oral views, data and arguments may be presented at the public hearing to be held in Washington, D.C. on July 16, 1985.

The Department of Energy is extending the period for final action to either grant or deny the petitions received from Michigan and Hawaii to October 31, 1985.

**ADDRESSES:** Written comments, statements and requests to speak at the hearing are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Products, Docket No. CE-CP-SPRM- (appropriate State code), Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319.

The hearing will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, D.C.

Copies of the petitions, the transcript of the public hearing, and public comments received may be obtained from the DOE Freedom of Information Reading Room: U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

For more information concerning public participation in this rulemaking proceeding, see section IV "Public Comment Procedures" of this notice.

### FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE-112, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513.

### SUPPLEMENTARY INFORMATION:

- I. Introduction
  - a. Authority
  - b. Background
- II. Discussion
  - a. General
  - b. Summary of State Petitions
- III. Environmental, Regulatory Impact, and Regulatory Flexibility Reviews
  - a. Environmental Review
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- IV. Public Comment Procedures
  - a. Participation in Rulemakings
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### I. Introduction

#### a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619,<sup>1</sup> created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified as a covered product by the Secretary of Energy, if the product uses a specified minimum amount of energy. Section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing,

<sup>1</sup> Part B of Title III of EPCA as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act".

labeling, and energy efficiency standards.

For each of the covered products, DOE is required to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy is a rule that supersedes any State standard. Section 325(b). If, because there is no Federal rule, a State efficiency standard is not superseded, persons subject to it may petition DOE to have it superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and such regulation unduly burdens interstate commerce. Section 327(b)(1). A State whose energy efficiency standard is or would be superseded may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is a stricter standard. However, DOE cannot issue the requested rule if the State standard would unduly burden interstate commerce. Section 327(b)(3).

#### b. Background

On December 22, 1982, DOE published a final rule in which DOE determined that energy efficiency standards for clothes dryers and kitchen ranges and ovens would not result in a significant conservation of energy and would not be economically justified. (47 FR 57198) (Referred to hereafter as the December 1982 rule). The December 1982 rule also established procedures governing petitions to DOE, both by States to obtain exemption from preemption of State or local energy efficiency standards and by manufacturers to obtain exemption from State or local energy efficiency standards.

Pursuant to the procedures established in the December 1982 rule, DOE received petitions from five States

requesting, in each case, that the State energy efficiency standard requiring intermittent ignition devices (IIDs) for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption. DOE published proposed rules granting the five State Petitions on August 1, 1983. (48 FR 34858) On March 27, 1984, DOE published final rules granting each State's petition for exemption of State standards for clothes dryers and/or kitchen ranges and ovens. (48 FR 11764)\*

On August 30, 1983, DOE published a final rule with respect to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces. (48 FR 39376) (Referred to hereafter as the August 1983 rule). For each product, except central air conditioners, DOE determined that a standard would not result in a significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE determined that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

DOE received petitions from 26 States, requesting in each case, that one or more State or local energy efficiency standard pertaining to one or more of seven covered products be exempted from Federal preemption.<sup>2</sup> On August 17, 1984, DOE proposed to amend § 430.33 to issue rules permitting each of the 26 States to maintain applicable standards pertaining to IID requirements for furnaces and kitchen ranges and ovens, and standards for refrigerators and refrigerator freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces. 49 FR 32944.

## II. Discussion

### a. General

Section 327(a)(2) of the Act provides that any Federal standard applicable under section 325 supersedes any non-identical State or local standard. Section 325(b) explicitly requires that a determination by DOE that no Federal energy efficiency standard for a particular product is warranted would

also supersede any State or local energy efficiency standard. Section 327(b)(3), however, provides that a State may petition for, and DOE may issue, a rule exempting a State or local standard from Federal supersession.

Michigan and Hawaii have each petitioned the Department for a rule to allow the State to maintain its applicable State energy efficiency standards for clothes dryers, water heaters, furnaces, and/or kitchen ranges and ovens. Since Michigan's petition for clothes dryers, kitchen ranges and ovens and furnaces was not submitted within the 120 day time period as required by 10 CFR 430.41(b)(2), the Michigan standards for the products were superseded when the Department of Energy's standards for clothes dryers and kitchen ranges and ovens became effective on June 20, 1983, and for furnaces on February 27, 1984. Supersession of these regulations will remain in effect unless DOE issues a final rule granting the petition. Similarly, Hawaii's water heater standard with an effective date June 1, 1985, was filed after the 120 day period and is preempted unless DOE issues a final rule granting the petition.

Michigan and Hawaii have met the filing requirements of 10 CFR 430.44(b). The petitions have presented information which indicates that the applicable State regulations are more stringent than the Federal standard and that, in each case, there is a significant State interest to justify the State regulations. DOE has made a preliminary determination that, in each case, there does not appear to be any undue burden on interstate commerce resulting from the State's regulations. Accordingly, DOE is proposing to amend § 430.33 to permit Michigan and Hawaii to maintain applicable energy efficiency standards for clothes dryers, water heaters, furnaces and/or kitchen ranges and ovens.

With respect to DOE's final determinations on these petitions, the Department is extending to October 31, 1985, the period for action to either grant or deny each petition. Section 327(b)(4) of the Act and § 430.48(a) of DOE's regulations require the Department to take final action to either grant or deny a petition within six months of the date it is filed, except that the Department may publish a notice in the Federal Register extending such period to a date certain. It is further required that such notice shall include the reasons for delay. DOE is extending the period for final action in these rulemakings to provide for the ninety day comment period required by § 430.43 of the

\* The five States are California, New York, Wisconsin, Minnesota and Oregon. Each State was granted an exemption for its State standard for kitchen ranges and ovens. Wisconsin, Minnesota and Oregon also sought and were granted exemption for their standards for clothes dryers.

<sup>2</sup> DOE received petitions from: Arkansas, Virginia, Florida, Pennsylvania, Wisconsin, South Carolina, New Mexico, Georgia, Rhode Island, New Hampshire, Massachusetts, California, Oregon, New York, Missouri, Texas, New Jersey, Illinois, Utah, Iowa, West Virginia, Minnesota, Washington, Kansas, Hawaii and Tennessee.

regulations and to allow for a substantive review of the comments during the comment period, which ends August 22, 1985.

#### b. Summary of State Petitions

1. *Michigan (MI033)*. The petition submitted by Michigan seeks a rule exempting from Federal preemption section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031 of the Michigan Administrative Code as they pertain to clothes dryers, furnaces with an input rating of 225,000 Btu/hr. or less, and kitchen ranges and ovens. The Michigan law prohibits the installation of new appliances using a gaseous fuel (other than propane) that is not equipped with an IID. Exempted from this requirement are gas appliances installed in mobile or modular homes.

In its petition, Michigan states that its law is based on the fact that conservation is the "cheapest, most secure and most environmentally benign source of energy for Michigan" and that conservation makes money available in the State for alternate purchases or investments in industrial productivity. Michigan also asserts that these regulations have been in effect since 1980 without complaints from appliance manufacturers and that retaining the State's requirements would not have any additional effects on the appliance market in Michigan.

DOE has revised Michigan's petition in accordance with the requirements of section 327(b)(3) of the Act and § 430.47 of the regulations. Based on its review, DOE has determined that Michigan has presented prima facie evidence showing that section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031, of the Michigan Administrative Code are more stringent than DOE's rule for gas clothes dryers, furnaces and kitchen ranges and ovens, are justified by a significant State interest, and do not appear to impose an undue burden on interstate commerce. Accordingly, DOE is proposing to issue a rule amending § 430.33 exempting section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031 of the Michigan Administrative Code from the preemptive provisions of section 327(a)(2) of the Act.

2. *Hawaii (HI034)*. The petition submitted by Hawaii on September 7, 1984, seeks a rule exempting from Federal preemption the State's Act 124 of 1984, which prohibits, after June 1, 1985, the sale or installation of any water heater in the State that does not meet the energy efficiency standard of the American Society of Heating,

Refrigerating and Air Conditioning Engineers, Inc. (ASHRAE) as expressed in the current ASHRAE-90 Standard. ASHRAE Standard 90A-1980<sup>4</sup> specifies that electric water heaters shall have a stand-by loss not exceeding 4 watts per square foot of tank surface area and oil and gas-fired water heaters shall have a recovery efficiency not less than 75 percent and a stand-by loss percentage equal to the expression  $2.3 + 67/V$ , where V equals the rated volume in gallons.

Hawaii believes that in the absence of standards, less expensive, inefficient appliances could be purchased by consumers, who are unaware of life cycle costing, and by developers or others, who might benefit from minimizing initial costs.

DOE has reviewed Hawaii's petition in accordance with the requirements of section 327(b)(3) of the Act and § 430.47 of the regulations. Based on its review, DOE has determined that Hawaii has presented prima facie evidence showing that State Act 124 of 1984 is more stringent than DOE's rule for water heaters, is justified by a significant State interest, and does not appear to impose an undue burden on interstate commerce. Accordingly, DOE is proposing to issue a rule amending § 430.33 exempting Act 124 of 1984 from the preemptive provisions of section 327(a)(2) of the Act.

### III. Environmental, Regulatory Impact, and Regulatory Flexibility Reviews

#### a. Environmental Review

The Department has prepared and issued an Environmental Assessment (EA) (DOE/EA-0113) on the impact of setting and implementing energy efficiency standards for all 13 types of consumer products identified in section 322(a)(1)-(3) of the Act. A Finding of No Significant Impact (FONSI) and Notice of Availability of that EA were published with the June 30, 1980, proposed rule for minimum energy efficiency standards for eight of the products. (45 FR 44088) Copies of that EA/FONSI may be obtained from the address indicated at the beginning of this notice.

The 1980 Environmental Assessment for the proposed energy efficiency standards estimated that the energy savings resulting from national standards for refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, kitchen ranges and ovens,

central air conditioners and furnaces would be within the range of 0.8 to 1.6 quads per year. The EA then analyzed the environmental impacts of this change in energy use. DOE has evaluated the regulations of the States of Michigan and Hawaii.

The potential environmental impacts of these standards are related to the resultant savings in energy usage and improved indoor air quality. The resultant effect of these regulations on the energy efficiency of each of the products covered falls below that energy efficiency level for the products used by DOE in performing its 1980 EA. The improvement to indoor air quality for these regulations will be similar to that associated in the 1980 EA for the two products, but will occur in only the two States rather than nationally. Hence, environmental impacts for the energy savings and improved air quality associated with these State regulations for the two products will be far below that which DOE estimated to result from national standards for eight products. Therefore, based on the findings of the 1980 EA, DOE had determined that granting the petitions of the States of Michigan and Hawaii clearly will not significantly affect the quality of the human environment so that neither an environmental assessment nor an environmental impact statement is required.

#### b. Regulatory Impact Review

In light of the foregoing analysis of the effect of the proposed actions, DOE has concluded that the rules are not "major rules" for purposes of Executive Order 12291 because they will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the proposed rules were submitted to OMB for review without a regulatory impact analysis.

#### c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the proposals, if promulgated, will not have a "significant economic impact on a

<sup>4</sup>Hawaii, in its earlier petition, sought exemption for its water heater standards as they related to new construction and renovation.

substantial number of small entities". The Impacts on small businesses which are appliance manufacturers, were assessed very closely in the eight products rulemakings and were considered together with other relevant factors in conducting DOE's analysis of these petitions. For purposes of assessing these impacts, the term "small business" was defined in consultation with the Small Business Administration.

#### IV. Public Comment Procedures

##### a. Participation in Rulemakings

DOE encourages the maximum level of public participation in these rulemakings.

Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposals. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., at the time and place indicated at the beginning of this notice.

Copies of the petitions are available for review in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the DOE Freedom of Information Reading Room at the address specified at the beginning of this notice. Such persons are advised to contact the DOE Freedom of Information Reading Room in advance of such requests to determine if there will be any charges associated with satisfying their request.

DOE has established a comment period of 90 days following publication of this notice, for persons to submit written comments on these proposals. All written comments and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of any of these documents by writing to the DOE Freedom of Information Reading Room at the address specified at the beginning of this notice. Such persons are advised to contact the DOE Freedom of Information Reading Room in advance of such requests to determine if there will be any charges associated with satisfying their request. Also, persons interested in obtaining a copy of the transcript from the public hearing have the option of purchasing it directly from the transcribing reporter for the public hearing. The identity of the transcribing reporter for the public hearing may be determined by contacting the person in the DOE Conservation and Renewable

Energy Office of Hearings and Dockets whose address, and telephone number appear at the beginning of this notice.

##### b. Written Comment Procedures

Interested persons are invited to participate in these proceedings by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below. Comments on the petition should be labeled both on the envelope and on the documents "Appliances (Docket No. CE-CP-SPRM-[Appropriate State Code])". All written comments must be received by the date specified at the beginning of this notice in order to insure full consideration. Five (5) copies are requested to be submitted. This is not a requirement, however, in order to submit comments, five copies are requested to permit timely review of the comments received on this matter. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and if possible, 5 copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests for confidentiality include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

##### c. Public Hearing

1. Procedure for Submitting Requests to Speak. In order to have the benefit of a broad range of public viewpoints in these rulemakings, DOE will hold a

public hearing. Listed at the beginning of this notice are the date, addresses, and DOE contacts for the hearing. Any person who has an interest in these proceedings, or who in a representative of a group or class of persons having an interest, may submit a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Appliances: Petitions for Exemption from Preemption of State Efficiency Standards (Docket No. CE-CP-SPRM-[Appropriate State Code])" and should be sent to the proper address and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and give a telephone number where he or she may be contacted. Each person requesting an opportunity to speak should give a concise summary of the proposed oral presentation.

2. Selection of Speakers. DOE reserves the right to select the persons to be heard at the hearing, and to schedule the respective presentations. DOE will endeavor to afford all persons who request to speak an opportunity to be heard. However, in the event that more persons request to speak at the hearing than time permits to be heard, DOE may refuse some persons an opportunity to make a scheduled presentation. (DOE may, for example, select only one person to speak on behalf of a given group or organization for which two or more representatives have requested to speak). The length of each presentation will be limited to 20 minutes. Scheduled speakers will be so notified by DOE.

Speakers are requested to submit 10 copies of their statement by the date given at the beginning of this notice; however, this is not a requirement for making an oral presentation at a hearing. Ten copies are requested to be submitted in advance of the hearings in order that they may be distributed to the DOE officials who will be serving on the panel at the hearing for review prior to the hearing itself and so that they may be made available to persons attending the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with the Office of Hearings and Dockets by so indicating in the letter requesting to make an oral presentation.

3. Conduct of Hearing. A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5

U.S.C 553 and section 336(a)(1) of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

#### List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., May 3, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

#### PART 430—ENERGY CONSERVATION PROGRAMS FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Sec. 327(b)(3), Pub. L. 94-163, 89 Stat. 917, as amended by Pub. L. 95-619, 92 Stat. 3266, 42 U.S.C. 629(b)(3).

2. Section 430.33 is amended by adding new paragraphs (a)(6), (b)(4), (e)(25) and (h)(26) to read as follows:

##### § 430.33 Preemption of State regulations.

(a) Kitchen Ranges and Ovens:

(6) Section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031 of the Michigan Administrative Code pertaining to gas kitchen ranges and ovens that are covered products, are exempt from preemption.

(b) Clothes Dryers

(4) Section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031 of the Michigan Administrative Code pertaining to gas

clothes dryers that are covered products, are exempt from preemption.

(e) Water Heaters

(25) Act 124 of 1984 by the State of Hawaii pertaining to water heaters that are covered products, is exempt from preemption.

(h) Furnaces

(26) Section 125.1513a of the Michigan Compiled Laws and Part 10, section R408.31031 of the Michigan Administrative Code pertaining to gas furnaces that the covered products, are exempt from preemption.

[FR Doc. 85-12343 Filed 5-23-85; 8:45 am]

BILLING CODE 8450-01-M

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 443

##### Health Spas Trade Regulation Rule Proceeding

**AGENCY:** Federal Trade Commission.

**ACTION:** Extension of time for filing comments on staff report and presiding officer's report.

**SUMMARY:** The Federal Trade Commission is seeking public comment on the Staff Report, filed January 22, 1985 and the Presiding Officer's Report, filed May 4, 1979 in the Health Spas Trade Regulation Rule proceeding. The time for filing comments is hereby extended from May 24, 1985 to June 7, 1985.

**DATE:** Written comments on the reports will be accepted by the Commission until June 7, 1985.

**ADDRESSES:** Written comments should be sent to: Presiding Officer James P. Greenan, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Walter Gross, Attorney, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580; telephone 202-523-3826.

**SUPPLEMENTARY INFORMATION:** By Federal Register notice of March 25, 1985 (50 FR 11709) the Federal Trade Commission extended the period for filing written comment on the Spas Trade Regulation Rule Proceeding (Public Record 215-50). The comment period was to end on May 24, 1985.

In granting the Motion of one of the participants in the rulemaking proceeding for extension of time within which to file comments, the Presiding Officer has extended the comment period for an additional 14 days. June 7, 1985 is the date set by which time comments should be received.

Issued: May 17, 1985.

James P. Greenan,

Presiding Officer.

[FR Doc. 85-12547 Filed 5-23-85; 8:45 am]

BILLING CODE 6750-01-M

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

##### 18 CFR Part 271

[Docket No. RM79-76-107 (Kansas-1)]

##### High-Cost Gas Produced From Tight Formations; Kansas; Order Remanding Jurisdictional Agency Recommendation for Tight Formation Designation

Issued: May 22, 1985.

**AGENCY:** Federal Energy Regulatory Commission DOE.

**ACTION:** Order remanding recommendation.

**SUMMARY:** Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Federal Energy Regulatory Commission remands the recommendation of the Kansas Corporation Commission that the Niobrara Formation underlying Cheyenne, Rawlins, Sherman and Thomas Counties be designated as a tight formation under § 271.703(d).

**DATE:** This order is effective May 22, 1985.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth Pendley, (202) 357-8476

or

C.W. Gray, Jr., (202) 357-8731

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On March 15, 1982, the Federal Energy Regulatory Commission (Commission) received a recommendation, pursuant to § 271.703 of the Commission's regulations<sup>1</sup> from the Kansas Corporation Commission (Kansas) that the Niobrara Formation<sup>2</sup> underlying Cheyenne, Rawlins, Sherman and Thomas Counties, Kansas, be designated as a tight formation.

The recommendation was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (Director), issued on March 30, 1982.<sup>3</sup>

**Background**

In order to meet § 271.703(c)(2) tight formation guidelines, it is necessary, *inter alia*, that the "estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less." Here, the Kansas-1 recommendation included permeability measurements from two wells located in the northwestern corner of the 2.6 million acre recommended area. Measurements from the two wells (there are more than 125 wells in the area) indicate that permeability was within Commission guidelines.

Under the tight formation program, as detailed in Order No. 99,<sup>4</sup> tight formation recommendations submitted to the Commission by the various jurisdictional agencies are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or to develop any additional evidence which it deems necessary in order for it to issue a rule in a tight formation designation proceeding.

On May 13, 1982, the Director sent a letter to Kansas requesting clarification of the information submitted and additional permeability data. As the result of an audit, core permeability data was uncovered from five additional wells in the area with an average permeability range from .12 to .90

millidarcies. Another letter dated July 28, 1982 was sent to Kansas requesting an explanation of how the two well permeability samples were representative of the entire recommended area.

In response to the Director's request, Kansas submitted additional porosity and permeability data on September 20, 1982. However, this additional data did not resolve the permeability question.

On May 9, 1983, the Director sent another letter to Kansas again requesting an explanation as to how the permeability information submitted might cover the entire recommended area. In a letter forwarded by Kansas on May 20, 1983, the Director was told that the Commission had received all the pertinent data from Kansas and from the applicant. No additional correspondence has been received.

**Discussion**

Review of Kansas' current recommendation reveals that the Commission has two wells in which the permeability was actually measured. While these two points met the Commission guidelines, they are located in the northwestern portion of the recommended area where permeability levels are expected to be the lowest.<sup>5</sup> In addition, a staff audit discovered five other wells in the northwestern area of the recommended tight formation where permeability levels are greater than 0.1 millidarcy.

Even though Kansas supplied additional permeability information based on mathematical calculations, the permeability data submitted did not support the tight formation designation for the entire 2.6 million acres. Due to the lack of permeability evidence, the Commission believes it would be inappropriate to take action in this docket based on the current state of the record. Kansas and the interested parties should re-evaluate the accuracy, persuasiveness, and sufficiency of the evidence submitted. Should Kansas resubmit its recommendation, it should include any new evidence that addresses the issues raised in this docket.

**The Commission Orders**

Based on the discussion herein, the Commission remands to the Kansas Corporation Commission its recommendation that the Niobrara

Formation underlying Cheyenne, Rawlins, Sherman and Thomas Counties be designated as a tight formation. This action is without prejudice to resubmittal of the recommendation in accordance with § 271.703, should Kansas obtain and submit additional information from any interested parties.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12559 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF THE TREASURY****Customs Service****19 CFR Part 24****Proposed Customs Regulations Amendment Relating To Assessment and Collection of Certification Fees**

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations relating to the fee to be charged by Customs for furnishing official certifications. Often referred to as a delivery verification, these certificates are Customs official acknowledgement that certain merchandise was landed in the U.S. from a foreign country and provides information to the requesting party, usually the shipper, as to the disposition of the merchandise. Under the proposal, the fee would be waived for all delivery certifications if the request is made at the time the entry documents are filed. If the request for certification is made after the entry documents are filed, a fee of \$10.00 for each hour or fraction thereof for document searches would be charged in addition to a charge of 15 cents per page for photocopying. This amount must be paid prior to release of a certification. This new fee system would replace the current fee of 20 cents. Customs now charges for all certifications regardless of when they are requested. This change would permit Customs to maintain its present service of providing official certificates for the trade community at a fee commensurate with the actual cost of the service rendered.

**DATE:** Comments must be received on or before July 23, 1985.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, U.S. Customs Service, 1301

<sup>1</sup> 18 CFR 271.703.

<sup>2</sup> The Niobrara Formation is an Upper Cretaceous blanket deposit of chalks and argillaceous limestones found between the Pierre and Carlisle Shales. Its thickness ranges from 400 to 500 feet throughout the proposed area; the average depth to the top of the producing interval is 1,050 feet.

<sup>3</sup> 47 FR 14490 (April 5, 1982). One comment was received in support of the recommendation. No public hearing was requested and none was held.

<sup>4</sup> Docket No. RM79-78, issued August 22, 1980, FERC Statutes and Regulations § 30.183.

<sup>5</sup> Due to the nature of the chalk formation, permeability should be in direct relationship to depth: studies show the deeper the formation the lower the permeability. The permeability points provided by Kansas are from wells located in the northwestern portion of the recommended area where the Niobrara Formation is at its deepest.

Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Herb Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-535-4161).

**SUPPLEMENTARY INFORMATION:**

**Background**

As a service to the trade community, Customs routinely issues official certificates such as certificates of landing and disposition of merchandise arriving in the U.S. from a foreign country. This particular certificate, which is often referred to as a "delivery verification," is Customs official acknowledgement that certain merchandise was landed in the U.S. and provides information to the requesting party, usually the shipper, as to disposition of the merchandise. Unless otherwise prescribed by law, a fee of 20 cents is charged for each certificate issued, as required by § 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)). Notwithstanding inflation, this 20 cent fee has been collected by Customs for this service since at least the 1930's. This charge does not concern certification or navigation fees relating to vessel services which are provided for in § 4.98(a), Customs Regulations 919 CF 4.98(a).

By Circular ENT-1-EV, dated December 14, 1965, Customs personnel were advised of two methods of verifying the landing and disposition of importer merchandise. Verification may be accomplished on Customs Form 3227, "Certificate of Disposition of Imported Merchandise", or on an annotated copy of the inward foreign air or vessel manifest, prepared by the requester. Also, verification may be made on Department of Commerce Form 647P, "Delivery Verification Certificate".

In June 1982, Customs headquarters surveyed the Customs regions to determine the volume and cost of processing "delivery verification" requests. The survey revealed that nationwide there are approximately 21,500 such requests processed annually. Estimates of cost varied widely depending upon the extent and degree of difficulty of the research performed in locating the information requested. For example, at one port the verification procedure takes two forms: (1) Verification requests on Customs Form 3227 received at the time of entry, in which case immediate verification of landing and disposition is made at little or no cost; and (2) requests received after entry, which require a Customs employee to locate the entry and verify

the information at a substantially higher cost.

Some Customs ports were in favor of eliminating the delivery verification procedures entirely citing budgetary and personnel restraints. Some ports wished to retain the current procedures but increase the fee to an amount commensurate with the cost of the service performed. Other ports wished to eliminate the current procedures and adopt less costly methods of verification.

While the issuance of delivery verification certificates is clearly not an essential Customs function or requirement, Customs believes that it provides a valuable service to the trade community and therefore should be retained. If this service were to be discontinued, as suggested by some ports, there would be no practical means for the shipper to determine the date of landing and disposition of the merchandise. For example, the information may be required to satisfy the exporter's bond, obtain drawback from a foreign government, resolve disputes with the carrier over loss or damage to the merchandise or merely be required by a foreign government for statistical or other purposes.

After a thorough review of this matter, Customs was of the opinion that the present service of providing official certificates for the trade community should be continued. Accordingly, in a notice published in the *Federal Register* on June 23, 1983 (48 FR 28671), Customs proposed to amend § 24.12(a)(2), by increasing the certification fee from 20 cents to \$4.00 which, at that time, was the average cost of Customs for processing all requests.

**Discussion of Comments**

Four comments were received in response to the notice of proposed rulemaking. Three commenters suggested a dual fee system whereby certifications made at the time the entry documents are filed would have a lower fee than certifications made after goods have been cleared and entry documents filed. This suggestion was based on the fact that a certification made at the time of entry requires only a cursory review of the documents and a signature or stamp attesting to the disposition of the merchandise, whereas a certification made after filing requires document retrieval and research.

After consideration of these comments and further review of the matter, it was determined that the original proposal was not cost-effective as the expenses that Customs would incur in collecting the fees would be more than the fees themselves.

Accordingly, a new fee proposal has been developed whereby the fee would be waived for delivery certifications requested at the time entry documents are filed. At this time it is not cost-effective for Customs to collect a minimal certification fee. However, for certifications requested after the entry documents are filed, a fee of \$10.00 for each hour or fraction thereof for document searches by each clerical, professional or supervisor will be charged, plus a charge of 15 cents per page for photocopying. Customs believes these charges are analogous to those found in § 1.6, Treasury Department Regulations (31 CFR 1.6), for finding records and information requested pursuant to the Freedom of Information Act (5 U.S.C. 552). These certification fees may also be charged pursuant to the User Charges Statute (31 U.S.C. 9701) which states that the head of each agency may prescribe regulations establishing the charge for any services provided by the agency based on the fair and actual costs to the Government. These fees, which must be paid prior to release of a certification, will be applied to all certifications requested after the entry documents are filed and will not be limited to those accomplished only on Customs Form 3227 and Commerce Form 647P.

**Certification Fee Schedule**

1. No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed.
2. A fee of \$10.00 for each hour or fraction thereof for document searches by each clerical, professional or supervisor will be charged for furnishing an official certificate if the request is made to Customs after the entry summary is filed, plus a charge of 15 cents per page for photocopying.

These fees shall remain in effect until changed by publication of a general notice in the *Federal Register* and the *Customs Bulletin*, as provided for in § 24.12(a)(2), Customs Regulations.

**Executive Order 12291**

Because this document will not result in a regulation which would be a "major rule" as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review is not required.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, this proposed amendment will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Comments

Before adopting this proposal consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

#### Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### Authority

The amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); sec. 624, 46 Stat. 759 (19 U.S.C. 1624); 80 Stat. 379 (5 U.S.C. 301); 96 Stat. 1052 (31 U.S.C. 9701).

#### List of Subjects in 19 CFR Part 24

Customs duties, Collections, Certification fees, and Imports.

#### Proposed Amendment

#### PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to revise § 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)), to read as follows:

##### § 24.12 Customs fees; charges for storage.

(a) \* \* \*

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of \$10.00 for each hour or fraction thereof for document searches by each clerical, professional or supervisor for furnishing an official certification requested after entry documents are filed, plus a charge of 15 cents per page for photocopying. The fee may be revised periodically by publication of a general notice in the *Federal Register* and Customs Bulletin setting forth the

revised fee. The published revised fee shall remain in effect until changed.

William von Raab,

Commissioner of Customs.

Approved: May 3, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-12612 Filed 5-23-85; 8:45 am]

BILLING CODE 4820-02-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Social Security Administration

#### 20 CFR Part 416

[Reg. No. 16]

#### Supplemental Security Income for the Aged, Blind, and Disabled; Support and Maintenance Assistance Based on Need

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** These proposed regulations provide that we will not count as income or as a resource certain support and maintenance assistance in determining eligibility for and the amount of Supplemental Security Income (SSI) payments. They reflect section 1612(b)(13) of the Social Security Act (the Act) as amended by section 404(a) of Pub. L. 98-21, the Social Security Amendments of 1983 and section 2639(b) of Pub. L. 98-369, the Deficit Reduction Act of 1984. Section 1612(b)(13) now provides that support and maintenance assistance, including certain home energy assistance, which is provided on or after May 1, 1983 and before October 1, 1987, will not be counted as income if it has been certified by the State as both provided on the basis of need and (1) provided in kind by a private nonprofit organization, or (2) provided in cash or in kind by an entity providing home energy whose revenues are derived on a rate-of-return basis regulated by a State or Federal governmental body, a supplier of home heating gas or oil, or a municipal utility providing home energy.

**DATE:** Comments must be received on or before July 23, 1985.

**ADDRESSES:** Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments

received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7337.

**SUPPLEMENTARY INFORMATION:** Under the law and regulations prior to May 1, 1983, the effective date of section 404 of Pub. L. 98-21 (the Social Security Amendments of 1983), support and maintenance assistance, other than certain home energy assistance which was excluded under section 128 of Pub. L. 97-377 and section 545(a) of Pub. L. 97-424, provided to an aged, blind, or disabled individual, was counted as income in determining whether he or she was eligible for SSI benefits and the amount of his or her benefit. Section 128, which was effective beginning December 18, 1982, stated that no funds provided under it could be used to reduce or deny SSI payments because of the receipt of certain home energy assistance. Section 128 expired September 30, 1983, as did interim regulations reflecting its provisions that were published July 21, 1983 (48 FR 33256). Section 545(a) of Pub. L. 97-424 added a new section 1612(b)(13) to the Act to provide that certain home energy assistance not be counted as income for SSI purposes. Section 545(a) was enacted on January 6, 1983, to be effective February 1, 1983 through June 30, 1985. Interim regulations reflecting its provisions were also published on July 21, 1983. However, section 2639 of Pub. L. 98-369, effective October 1, 1984, repeals subsection (a) of section 545. We therefore propose to remove §§ 416.1155 and 416.1156 of the interim regulations and to make corresponding changes to §§ 416.1124, 416.1161, and 416.1201 of the interim regulations to remove the references to the home energy exclusion added by section 545. Public comments which were received on the interim home energy assistance regulations will be addressed in the final regulations implementing these proposed rules on certain support and maintenance assistance.

Section 404 of Pub. L. 98-21, enacted April 20, 1983 and effective from May 1, 1983 through September 30, 1984, amended section 1612(b)(13) of the Act. Section 2639 of Pub. L. 98-369, enacted July 18, 1984 and effective from October 1, 1984 through September 30, 1987 made the same changes to section 1612(b)(13) of the Act as did section 404 of Pub. L. 98-21. The provisions of section

1612(b)(13), as amended by section 404 of Pub. L. 98-21 and extended through September 30, 1987 by Pub. L. 98-369, now provide that certain support and maintenance assistance will not be counted as income when determining an individual's eligibility for and the amount of SSI payments. Support and maintenance assistance, as used in this document, includes assistance in meeting the costs of home energy.

Under these proposed rules, the support and maintenance assistance must be certified in writing by the appropriate State agency as both provided on the basis of need and (1) provided in kind by a private nonprofit organization, or (2) furnished in cash or in kind by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.

In addition, any support and maintenance assistance which we do not count as income will not be considered a resource. This policy is necessary in order for us to carry out the legislative intent that this assistance not be used to reduce or deny SSI payments.

We will not count certain support and maintenance assistance provided to an SSI claimant or his or her ineligible spouse, parent, sponsor (or a sponsor's spouse) of an alien, or essential person. In addition, we will not consider this assistance in determining a pro rata share of household operating expenses under the rules in § 416.1133. These policies are also necessary to carry out the legislative intent that certain assistance not affect an individual's SSI eligibility or payment amount. To count support and maintenance assistance provided to an individual whose income and resources are deemed to be the income and resources of the SSI claimant or to any person who lives in an SSI claimant's household would defeat the purpose of this statutory provision.

Section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369 also apply to the Aid to Families with Dependent Children (AFDC) program. (Proposed regulations for the AFDC program are also contained in this issue of the Federal Register. However, for the AFDC program, the exclusions are at State option rather than mandatory. In addition, a different definition of support and maintenance has been used for the AFDC program. As a result there will be situations in which assistance will be provided to joint AFDC/SSI households and not excluded under both programs. We had to determine how to

treat such assistance. Under the AFDC program the State will be required to prorate the assistance furnished to a household in order to determine what portion is attributable to the AFDC members of the household. We considered a similar provision for the SSI program in cases in which assistance would be counted for SSI purposes but excluded under the AFDC program because of the different definitions of support and maintenance assistance for the two programs. We decided not to include a rule for SSI purposes. The AFDC program, which pays benefits based on the family unit, considers any income of a member of the unit as income not to the individual but to the entire unit. The SSI program pays benefits to individual claimants and therefore only considers as income cash or other items received by the SSI claimant that he or she can use (own) to meet food, clothing, or shelter needs. If assistance is provided to a joint AFDC/SSI household and it is established that it was received by an individual other than the SSI claimant, it is not income to the SSI claimant. If it is not established that any one individual received the assistance but rather that it was received by the entire household, any income will be allocated equally among the members to determine what portion is income to the SSI claimant. Since this is a part of determining whether the SSI claimant has income, we did not believe it was necessary to include a provision to this effect in these proposed regulations.

#### Regulatory Provisions

The proposed rules in § 416.1157 reflect the statutory provision regarding the exclusion of support and maintenance assistance and provide necessary definitions. We have defined "support and maintenance" assistance as cash provided to meet food, clothing, or shelter needs or as in-kind support and maintenance as defined in § 416.1121(h), which is limited to food, clothing, or shelter. In this definition we have retained the SSI program's long standing definition of support and maintenance as food, clothing and shelter. That definition is an integral part of the program. Payments under the SSI program have always been intended to assist an individual in meeting his or her basic needs for food, clothing and shelter. Section 1612(a)(2) has always required that in-kind support and maintenance be counted as income for SSI purposes. In implementing section 1612(a)(2) of the Act we have defined in-kind support and maintenance as food, clothing and shelter. This assures that if an individual's basic needs of food,

clothing or shelter are being met by other sources, SSI benefits are not paid to meet the same needs. Thus, for the SSI program, the concepts of "basic needs" and "support and maintenance" are synonymous.

Since the statute provides that support and maintenance assistance includes assistance to meet the costs of home energy the definition of support and maintenance assistance includes home energy assistance. We have defined home energy assistance as assistance related to meeting the costs of heating or cooling a home and have listed examples of such assistance.

We have defined "based on need" generally in terms of whether the support and maintenance assistance or the home energy assistance was provided for the purposes of support and maintenance or home energy for an SSI claimant rather than in terms of assistance provided to individuals with limited income. We have defined based on need in this manner since it is implicit that if the assistance is provided to an SSI claimant it is provided to an individual with limited income. We expressly limited the definition of "based on need" to voluntary assistance rather than include assistance provided on the basis of an obligation. We so limited the definition because of congressional intent that section 1612(b)(13) of the Act, as amended by section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369, encourage the private sector to provide assistance to individuals and families with low income.

The rules in § 416.1157 also discuss what support and maintenance assistance we do not count as income. This section states that we will not count as income certain support and maintenance assistance received by an SSI claimant, his or her ineligible spouse, parent, sponsor (or a sponsor's spouse) of an alien, or essential person. This section also states that we will not consider such assistance in determining a pro rata share of household operating expenses under § 416.1133.

We have made conforming changes in § 416.1124 to provide that we will not count as unearned income certain support and maintenance assistance. We have also revised § 416.1161 to provide that we will not count such assistance provided to an ineligible spouse, an ineligible parent or essential person. In addition, we have revised the definition of resources in § 416.1201(a), to provide that support and maintenance assistance, which we do not count as income under § 416.1157, is not a resource.

**Executive Order 12291**

These proposed regulations have been reviewed under Executive Order 12291 and we have determined that they do not create costs of \$100 million or more yearly, or otherwise meet the threshold criteria of the Executive Order. This change will result in some increase in benefit payments since support and maintenance assistance will in certain cases be excluded from income and not considered resources, and benefit payments will be greater than they would have been in the absence of legislation. However, these program costs are due primarily to decisions made in the legislative process. Cost impacts directly resulting from the regulations themselves are minor. For this reason, the Secretary has determined that the regulations are not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

**Paperwork Reduction Act**

These regulations will impose no new reporting or recordkeeping requirements requiring clearance by the Office of Management and Budget.

**Regulatory Flexibility Act**

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities since they primarily affect individuals and States. States which will be affected are those which supplement the Federal SSI benefit and those States where Medicaid eligibility is tied to SSI benefit payments. However, a regulatory flexibility analysis as required under Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.007, Supplemental Security Income Program)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: October 5, 1984.

Martha A. McSteen,  
Acting Commissioner of Social Security.

Approved: February 8, 1985.

Margaret M. Heckler,  
Secretary of Health and Human Services.

**PART 416—[AMENDED]**

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Subpart K of Part 416 reads as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631, of the Social Security Act, as amended; sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1468, 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154 (42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383).

2. Section 416.1124 is amended by revising paragraph (c)(10), to read as follows:

**§ 416.1124 Unearned income we do not count.**

(c) \* \* \*

(10) Certain support and maintenance assistance as described in § 416.1157;

**§§ 416.1155 and 416.1156 [Removed]**

3. Part 416 is amended by removing §§ 416.1155 and 416.1156.

4. A new § 416.1157 is added to read as follows:

**§ 416.1157 Support and maintenance assistance.**

(a) *General.* Section 404 of Pub. L. 98-21 amended section 1612(b)(13) of the Social Security Act, effective for May 1, 1983 through September 30, 1984, to exclude certain support and maintenance assistance, which includes home energy assistance, from countable income for SSI purposes. Section 2639 of Pub. L. 98-369, effective October 1, 1984, through September 1987, also amended section 1612(b)(13) to provide that certain support and maintenance assistance, which includes home energy assistance, be excluded from countable income for SSI purposes. This section discusses how we apply section 1612(b)(13).

(b) *Definitions.* For support and maintenance assistance purposes—  
"Appropriate State agency" means the agency designated by the chief executive officer of the State to handle the State's responsibilities as set out in paragraph (c) of this section.

"Based on need" means that the provider of the assistance: (1) Does not have an express obligation to provide the assistance; (2) states that the aid is given for the purpose of support or maintenance assistance or for home energy assistance (e.g., vouchers for heating or cooling bills, storm doors); and (3) provides the aid for an SSI claimant, a member of the household in which an SSI claimant lives or an SSI claimant's ineligible spouse, parent, sponsor (or the sponsor's spouse) of an alien, or essential person.

"Private nonprofit agency" means a religious, charitable, educational, or other organization such as described in section 501(c) of the Internal Revenue

Code of 1954. (Actual tax exempt certification by IRS is not necessary.)

"Rate-of-return entity" means an entity whose revenues are primarily received from the entity's charges to the public for goods or services and such charges are based on rates established and regulated by a State or Federal governmental body.

"Support and maintenance assistance" means cash provided for the purpose of meeting food, clothing, or shelter needs or in-kind support and maintenance as defined in § 416.1121(h). Support and maintenance assistance includes home energy assistance. Home energy assistance means any assistance related to meeting the costs of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc.

(c) *What assistance we do not count as income.* We do not count as income certain support and maintenance assistance received on or after May 1, 1983 and before October 1, 1987 by you or your ineligible spouse, parent, sponsor (or your sponsor's spouse) if you are an alien, or an essential person. We also do not consider certain support and maintenance assistance in determining a pro rata share of household operating expenses under § 416.1133. We do not count that assistance which is certified in writing by the appropriate State agency to be both based on need and—

- (1) Provided in kind by a private nonprofit agency; or
- (2) Provided in cash or in kind by—
  - (i) A supplier of home heating oil or gas;
  - (ii) A rate-of-return entity providing home energy; or
  - (iii) A municipal utility providing home energy.

5. Section 416.1161 is amended by revising paragraphs (a)(17) and (b) to read as follows:

**§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.**

(a) \* \* \*

(17) Certain support and maintenance assistance as described in § 416.1157.

(b) *For an essential person.* We include all of an essential person's income as defined in § 416.1102, except for support and maintenance assistance as described in § 416.1157 and income

excluded under Federal laws other than the Social Security Act. (See the appendix to this subpart.)

6. The authority citation for Subpart L of Part 416 reads as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, 1473; 42 U.S.C. 1302, 1361, 1361a, 1382, 1382a, 1382b, 1382c(f), and 1383(d), unless otherwise noted.

7. Section 416.1201 is amended by revising the last sentence in paragraph (a) to read as follows:

**§ 416.1201 Resources; general.**

(a) *Resources; defined.* \* \* \*

In addition, support and maintenance assistance not counted as income under § 416.1157 are not considered resources.

[FR Doc. 85-10941 Filed 5-23-85; 8:45 am]

BILLING CODE 4190-11-M

**Food and Drug Administration  
21 CFR Ch. I**

[Docket No. 85N-0214]

**The Drug Price Competition and  
Patent Term Restoration Act of 1984;  
Establishment of a Public File and  
Request for Comments**

**AGENCY:** Food and Drug Administration.

**ACTION:** Request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of a docket containing a public record of the comments, views, and other information submitted to the agency from interested persons concerning Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and is inviting public comment on interpretation of the statute for purposes of the agency's regulation writing process.

**DATE:** Comments on Title I of Pub. L. 98-417 by July 8, 1985.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marilyn L. Watson, Center for Drugs and Biologics (HFN-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3640.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) was signed into law September 24, 1984. The new law consists of two titles that concern generic new drugs. Title I of the new law, which amends section 505 of the Federal Food, Drug, and Cosmetic Act, codifies FDA's authority to accept abbreviated new drug applications (ANDAs) for generic versions of drug products first approved after 1962. Prior to the enactment of Pub. L. 98-417, ANDAs were permitted under FDA regulations for generic versions of drug products first approved between 1938 and 1962. Title I also addresses filing and approval requirements for paper NDAs.

Title II of Pub. L. 98-417 amends the patent law to provide for the extension of the normal 17-year term of a product, use, or process patent of a patented product which is subject to premarketing clearance. In a future issue of the *Federal Register*, FDA will publish a similar notice concerning the establishment of a public file, and a request for comments, on Title II.

**II. Public Record**

FDA has established in the Dockets Management Branch, under Docket No. 85N-0214, a public file for all comments, views, and other information submitted to FDA concerning Title I of Pub. L. 98-417. Received comments will be incorporated into this public file and may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**III. Public Comment**

Section 105(a) of Pub. L. 98-417 requires FDA to promulgate implementing regulations. The new law is detailed and complex so that questions, identification of policy issues, and suggested interpretations of the new law by interested persons in the early stages of implementation of the law will assist FDA in developing these regulations in a timely fashion. Accordingly, FDA is inviting the submission of comments, views, or other information to assist the agency in its efforts to develop regulations implementing Title I of Pub. L. 98-417.

Interested persons may submit written comments on Title I of Pub. L. 98-417 to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. To assure consideration of comments by FDA in developing the proposed regulations, the comments on Pub. L. 98-417 should be submitted on or before July 8, 1985.

FDA has received comments and recommendations on Pub. L. 98-417 from the Pharmaceutical Manufacturers Association (PMA) and has placed these comments in the public file established by this notice. FDA invites comments on the PMA's submission.

Dated: May 17, 1985.

Mervin H. Shumate,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 85-12537 Filed 5-23-85; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 216**

**Production Accounting and Auditing  
System Regulations; Extension of  
Comment Period**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This Notice extends the comment period from May 31, 1985, to June 17, 1985, on the proposed rule concerning the information collection requirements necessary to verify that mineral production quantities have been reported and used in calculating royalties due the Government from Federal and Indian leases. This proposed rule was published in the *Federal Register* on April 1, 1985 (50 FR 12828). The extension of the comment period is in response to requests received from the public to allow additional time for comment.

**DATE:** Comments by June 17, 1985.

**ADDRESS:** Comments should be mailed or delivered to Mr. Orie L. Kelm, Chief, Office of Royalty Regulations,

Development and Review, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091.

**FOR FURTHER INFORMATION CONTACT:** Mr. Billie Clark, Lakewood, Colorado, (303) 231-3412.

Dated: May 21, 1985

Robert E. Boldt,

Associate Director for Royalty Management

[FR Doc. 85-12648 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-MR-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1200, 1202, and 1250

#### NARA Privacy Act, FOIA, and Official Seal Regulations

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** NARA procedures for implementing the Privacy Act of 1974 and the Freedom of Information Act. NARA is a new agency established by Pub. L. 98-497 and must publish regulations on these subjects.

**DATES:** Comments must be received by June 24, 1985.

**ADDRESS:** Comments should be sent to: Director, Program Policy and Evaluation Division, National Archives and Records Administration (NARA), Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

**SUPPLEMENTARY INFORMATION:** This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

#### List of Subjects

36 CFR Part 1200

Seals and insignia.

36 CFR Part 1202

Privacy.

36 CFR Part 1250

Freedom of information.

For the reasons set forth in the preamble, it is proposed to amend Chapter XII of Title 36 of the Code of Federal Regulations by adding Parts 1200, 1202, and 1250 to read as follows:

## PART 1200—OFFICIAL SEALS

### Sec.

1200.1 Definitions.

1200.2 Description and design.

1200.4 Authority to affix seals.

1200.6 Use of the seals.

Authority: 44 U.S.C. 2104(e), 2116(b), 2302.

### § 1200.1 Definitions.

For the purposes of this part—  
"Embossing seal" means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

"NARA" means all organizational units of the National Archives and Records Administration.

"Official seal" means the original(s) of the seal showing the exact form, content and color.

"Replica" or "reproduction" means a copy of the official seal displaying the form, content and color.

### § 1200.2 Description and design.

(a) *National Archives and Records Administration seal.* The design is illustrated below and described as follows:

Centered on a disc with a double-line border a solid line rendition of an heraldic eagle displayed holding in its left talon thirteen arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States and displayed above its head a partially unrolled scroll inscribed with the words LITTERA SCRIPTA MANET one above the other; all within the circumscription NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, with the date 1985 at bottom center.



(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription THE NATIONAL ARCHIVES OF THE UNITED STATES, with the date 1934 at the bottom center.



(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription NATIONAL ARCHIVES TRUST FUND BOARD, with the date 1941 at the bottom center.



### § 1200.4 Authority to affix seals.

The Archivist of the United States and the Archivist's designees are authorized to affix the official seals, embossing seals, replicas and reproductions to appropriate documents, certifications and other material for all purposes authorized by this part.

### § 1200.6 Use of the seals.

(a) The seals are the official emblems of NARA and their use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside NARA may be made only with prior written approval by NARA.

(c) Requests by any person or organization outside NARA for permission to use the seals must be made in writing to the Archivist of the United States, National Archives (N), Washington, DC, 20408, and must

specify, in detail, the exact use to made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the NARA and the National Archives of the United States seals shall be primarily for informational purposes and for authentication of documents. The National Archives Trust Fund Board seal shall be used only for Trust Fund documents and publications. The seals may not be used on any article or in any manner which may discredit the seals or reflect unfavorably upon NARA or which implies NARA endorsement of commercial products or services, or of the user's policies or activities.

(e) Falsely making, forging, counterfeiting, mutilating, or altering the official seals, replicas, reproductions or embossing seals, or knowingly using or possessing with fraudulent intent any altered seal is punishable under section 506 of title 18, United States Code.

(f) Any person using the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which provides penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

## PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

### Sec.

- 1202.1 Scope of part.
- 1202.2 Purpose.
- 1202.4 Definitions.

### Subpart A—General Policy

- 1202.10 Collection and use.
- 1202.12 Standards of accuracy.
- 1202.14 Rules of conduct.
- 1202.16 Safeguarding systems of records.
- 1202.18 Inconsistent issuances of NARA superseded.
- 1202.20 Records of other agencies.
- 1202.22 Supoena and other legal demands.

### Subpart B—Disclosure of Records

- 1202.30 Conditions of disclosure.
- 1202.32 Procedures for disclosure.
- 1202.34 Accounting of disclosures.

### Subpart C—Individual Access to Records

- 1202.40 Forms of request.
- 1202.42 Special requirements for medical records.
- 1202.44 Granting access.
- 1202.46 Denials of access.
- 1202.48 Appeal of denial of access within NARA.
- 1202.50 Records available at a fee.
- 1202.52 Prepayment of fees over \$25.
- 1202.54 Form of payment.

### Subpart D—Requests to Amend Records

- 1202.60 Submission of requests to amend records.

- 1202.62 Review of requests to amend records.
- 1202.64 Approval of request to amend.
- 1202.66 Denial of requests to amend.
- 1202.68 Agreement to alternative amendments.
- 1202.70 Appeal of denial of request to amend record.
- 1202.72 Statements of disagreement.
- 1202.74 Judicial review.

### Subpart E—Report on New Systems of Records and Alteration of Existing Systems

- 1202.80 Reporting requirement.
- 1202.82 Federal Register notice of establishment of new system or alteration of existing system.
- 1202.84 Effective date of new system of records or alteration of an existing system of records.

### Subpart F—Exemptions

- 1202.90 Specific exemptions.

### Subpart G—Assistance and Referrals

- 1202.100 Requests for assistance and referral.

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

#### § 1202.1 Scope of part.

This part sets forth policies and procedures concerning the collection, use, and dissemination of records maintained by NARA which are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. These policies and procedures govern only those records as defined in § 1202.4. Policies and procedures governing the disclosure and availability of NARA administrative records in general are in Part 1250 of this Chapter. This part also covers exemptions from disclosure of personal information; procedures for guidance of subject individuals in obtaining information and inspecting and disagreeing with the content of records; accounting for disclosures of information; special requirements for medical records; and fees.

#### § 1202.2 Purpose.

This part implements the provisions of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). This part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her, procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

#### § 1202.4 Definitions

For the purpose of this Part 1202:

"Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

"Agency" means agency as defined in 5 U.S.C. 552(e).

"Disclosure" means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use, and disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

"Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

"Solicitation" means a request by a NARA officer or employee that an individual provide information about himself or herself.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

"Subject individual" means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

"System manager" means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

"System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

### Subpart A—General Policy

#### § 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to

the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The Assistant Archivist for Management and Administration shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of social security number.* Before a NARA employee requests an individual to disclose his or her social security number, the officer or employee shall ensure that either:

- (1) The disclosure is required by Federal law; or
  - (2) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.
- If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the NARA employee who requests an individual to disclose his or her social security number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

#### § 1202.12 Standards of accuracy.

The system manager shall ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

#### § 1202.14 Rules of conduct.

All NARA employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, shall review the provisions of 5 U.S.C. 552a and the regulations in this part, and

shall conduct himself or herself in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

#### § 1202.16 Safeguarding systems of records.

The system manager shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(c) System managers shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

#### § 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies any procedures in this part are superseded to the extent of that inconsistency.

#### § 1202.20 Records of other agencies.

(a) *Other agencies' records managed and administered by NARA.* Rules governing the maintenance of systems of records of agencies other than NARA which are located in the National Archives of the United States and

Federal Records Centers are in Subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall advise the requester that the request has been forwarded to the responsible agency. Records in the custody of NARA which are the primary responsibility of the U.S. Office of Personnel Management (OPM) are governed by the OPM rules promulgated pursuant to the Act.

#### § 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 1250 of this chapter for administrative records and Part 1254 of this chapter for accessioned records, FRC records, and donated historical materials.

### Subpart B—Disclosure of Records

#### § 1202.30 Conditions of disclosure.

No NARA employee may disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act;

(c) For a routine use as published in a notice in the Federal Register;

(d) To the Bureau of the Census for uses pursuant to Title 13, United States Code;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record shall be transferred in a form that is not individually identifiable. The written statement shall include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes; These written statements shall be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be

deduced by combining various statistical records.);

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains (upon such disclosure, a notification must be sent to the last known address of the subject individual);

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) To a consumer reporting agency in accordance with section 3711 (f) of title 31; or

(l) Pursuant to the order of a court of competent jurisdiction.

#### § 1202.32 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under § 1202.30, he or she shall deny the request in writing and shall inform the requester of the right to submit a request for review and final determination to the Director, Legal Services Staff, National Archives (NSL), Washington, DC 20408.

#### § 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person

or agency to whom the disclosure is made.

(b) The system manager also shall maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 1202.30 or of disclosures made from exempt systems (see Subpart F of this part), the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

### Subpart C—Individual Access to Records

#### § 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the system manager or applicable NARA official at the address indicated in the Federal Register notice describing the pertinent system of records.

(b) The request shall be in writing and shall bear the legend "Privacy Act Request" both on the request letter and on the envelope. The request letter shall contain:

(1) The complete name and identifying number of the NARA system as published in the Federal Register;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the individual's association with NARA; and

(4) Any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager or other NARA official shall answer or acknowledge the request within 10 workdays of its receipt by NARA.

(c) System managers at their discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

#### § 1202.42 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the Office of Personnel

Management and are described in Chapter 339 of the Federal Personnel Manual (medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for a determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his or her guardian, or conservator.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release the information to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

#### § 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgement shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10-day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located. Requesters should be prepared to identify themselves by signature (i.e., to sign the access log on the date of access and to produce other identification verifying the signature).

(e) Upon request, a system manager shall permit a subject individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged only for copies requested by the individual and not for copies provided to the individual for the convenience of NARA.

(f) Subject individuals may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individuals in their request. A system manager shall not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42.

(g) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

#### § 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the *Federal Register* exempting the pertinent system of records from the access requirement. Exempt systems of records are described in Subpart F of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the Assistant Archivist for Management and Administration. The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) If the system manager is the Assistant Archivist for Management and Administration, that person shall retain the responsibility for denying or granting the request.

(d) The Assistant Archivist for Management and Administration shall,

in consultation with legal counsel and such other officials as deemed appropriate, determine if the requested record is in fact contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the Assistant Archivist for Management and Administration shall notify the system manager to grant the request in accordance with § 1202.44, or

(2) If the record is contained within an exempt system of records, the Assistant Archivist for Management and Administration shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requester of the right to judicial review of that decision as provided in § 1202.74; or

(ii) Notify the system manager to make the record available to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records.

#### § 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access, in whole or part, to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial. All appeals should be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408.

(b) Each appeal to the Deputy Archivist shall be in writing. The appeal should bear the legend "Privacy Act—Access Appeal." on both the face of the letter and the envelope.

(c) Upon receipt of appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the Deputy Archivist shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute NARA's final

determination on the request for access to the record and shall include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. The Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include an explanation of the reasons for the extension of time.

(f) Denial of access by the Archivist to records for which the Archivist is the system manager shall constitute the NARA final determination in such instance. Requesters shall be given notice of their right to seek judicial review of the determination, as provided in § 1202.74.

#### § 1202.50 Records available at a fee.

The system manager shall provide one copy of a record to a requester at a fee prescribed in § 1258.10 of this chapter.

#### § 1202.52 Prepayment of fees over \$25.

If the system manager determines that the estimated total fee is likely to exceed \$25, the system manager shall notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

#### § 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives Trust Fund and shall be addressed to the system manager.

#### Subpart D—Requests To Amend Records

#### § 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA system manager specified in the pertinent *Federal Register* notice concerning NARA's systems of records. A current NARA employee who desires to amend personnel records should write to the Director of Personnel, National Archives (NAP), Washington, D.C. 20408. Each request shall include evidence of and justification for the need to amend the pertinent record. Each request should

bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

**§ 1202.62 Review of requests to amend records.**

(a) The system manager shall acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment should include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager shall determine whether the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive Order.

**§ 1202.64 Approval of requests to amend.**

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary amendment to the record and shall send a copy of the amended record to the subject individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients. The system manager shall advise the Assistant Archivist for Management and Administration that a request to amend has been approved.

**§ 1202.66 Denial of requests to amend.**

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration.

(b) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines to amend the record in accordance with the request, the

Assistant Archivist promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 1202.64.

(c) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the Assistant Archivist promptly shall advise the requester in writing of the decision. The denial letter shall state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

**§ 1202.68 Agreement to alternative amendments.**

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the Assistant Archivist for Management and Administration who immediately shall instruct the system manager to make the necessary amendments in accordance with § 1202.64.

**§ 1202.70 Appeal of denial of request to amend a record.**

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial. The requester shall address the appeal to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(b) Each appeal to the Deputy Archivist shall be in writing and must be received no later than 30 calendar days from the date of the requester's receipt of a denial of a request to amend a record. The appeal shall bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the record should be amended as requested, he or she immediately shall instruct the

system manager to amend the record in accordance with § 1202.64 and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute the NARA final determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination shall be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. In extraordinary circumstances, the Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include a justification for the extension of time.

**§ 1202.72 Statements of disagreement.**

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement shall include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

**§ 1202.74 Judicial review.**

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in

which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

#### Subpart E—Report on New Systems of Records and Alteration of Existing Systems

##### § 1202.80 Reporting requirement.

(a) Prior to the establishment of a new NARA system of records or the alteration of an existing NARA system of records, the system manager shall notify the Assistant Archivist for Management and Administration of the proposed new system or alteration. The system manager shall include with the notification a complete description and justification for each system of records that the system manager proposes to establish or alter. If the Assistant Archivist for Management and Administration determines that the establishment or alteration of a system of records is in the best interest of the Government, the Assistant Archivist for Management and Administration will submit, no later than 60 calendar days prior to the establishment or alteration of a system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of the proposal on the privacy and other personal or property rights of individuals.

(b) The reports required by this regulation are exempt from reports control.

##### § 1202.82 "Federal Register" notice of establishment of new system or alteration of existing system.

The NARA Assistant Archivist for Management and Administration shall publish in the *Federal Register* a notice of the proposed establishment or alteration of a system of records when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days have elapsed from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by NARA of an objection to the proposal.

##### § 1202.84 Effective date of new system of records or alteration of an existing system or records.

Systems of records proposed to be established or altered in accordance

with this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 1202.82.

#### Subpart F—Exemptions

##### § 1202.90 Specific exemptions.

(a) The following NARA systems of records are exempt from subsections (c) (3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act of 1974:

(1) Investigation Case Files, NARA-24.

(2) Personnel Security Case Files, NARA-25.

(b) These systems of records are exempt:

(1) To the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any subject individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence; and

(2) To the extent the systems of records consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(c) These NARA systems of records have been exempted to maintain the efficacy and integrity of investigations conducted pursuant to NARA's responsibilities in the areas of Federal employment, Government contracts and access to security classified information.

#### Subpart G—Assistance and Referrals

##### § 1202.100 Requests for assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the Assistant Archivist for Management and Administration,

National Archives (NA), Washington, DC 20408.

#### PART 250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

##### Sec.

1250.1 Scope of part.

#### Subpart A—General Provisions

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1250.20 Published information and rules.

#### Subpart C—Availability of Orders, Regulations, and Manuals

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1250.52 Procedures for making records available.

1250.54 Submission of requests for described records.

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#### Subpart E—Exemptions

1250.70 Categories of records exempt from disclosure under FOIA.

#### Subpart F—Subpoenas and Other Legal Demands for NARA Administrative Records

1250.80 Service of subpoena and other legal demands for NARA administrative records.

Authority: 44 U.S.C. 2104 (a); 5 U.S.C. 552

##### § 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with

respect to NARA administrative records.

#### Subpart A—General Provisions

##### § 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

##### § 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of FOIA. NARA will furnish them promptly to any member of the public upon request addressed to the office designated in § 1250.54 at fees specified in § 1250.42. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of FOIA that records be available to the public refers only to records in existence at the date of the request and imposes no obligation on NARA to compile or create information or records in response to a request.

##### § 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in Subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

##### § 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by Part 1254 of this chapter (Availability of Records and Donated Historical Materials).

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

#### Subpart B—Publication of General Agency Information and Rules in the "Federal Register"

##### § 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the *Federal Register*, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submissions or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision or repeal of the materials described in this section.

#### Subpart C—Availability of Orders, Regulations, and Manuals

##### § 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an index of those materials as described in § 1250.34, at the National Archives Building located at 8th and Pennsylvania Avenue, Washington, DC. Reasonable copying services are available at fees specified in § 1258.10 of this chapter.

##### § 1250.32 Available materials.

NARA materials available under this Subpart C are as follows:

(a) NARA orders;

(b) Written statements of NARA policy that are not published in the *Federal Register*;

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

##### § 1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any

matter issued, adopted, or promulgated after July 4, 1967, and described in § 1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408.

##### § 1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see Part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

##### § 1250.38 Waiver of fee.

Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver request should explain how the information requested primarily benefits the general public and why it is, therefore, in the public interest for NARA to waive or reduce the fee.

##### § 1250.40 Searches.

(a) NARA may charge for the time spent in the following activities in determining "search time" subject to the search fee in § 1250.42:

(1) Time spent in trying to locate NARA records which come within the scope of the request;

(2) Time spent in either transporting a necessary NARA searcher to a place of record storage, or in transporting records to the location of a necessary NARA searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) NARA will not charge for the time spent in the following activities in determining "search time" subject to the search fees in § 1250.42:

(1) Time spent in examining a requested record to determine whether NARA should assert an exemption;

(2) Time spent in deleting exempt matter withheld from records otherwise made available;

(3) Time spent in monitoring a requester's inspection of disclosed NARA records; or

(4) Time spent in copying records.

##### § 1250.42 Fee schedule.

(a) *Reproduction fees.* Copies of NARA records will be furnished at the

fees for reproduction services in § 1258.10 of this chapter.

(b) *Search fees.*

(1) The standard search fee is \$8 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(2) When NARA must use professional staff to search for the requested records because clerical staff would be unable to locate them, the search fee is \$18 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(3) When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee is the direct cost to NARA.

§ 1250.44 *Form of payment.*

Requesters shall pay fees by check or money order made payable to the National Archives Trust Fund, and addressed to the official named by NARA in its correspondence.

§ 1250.46 *Prepayment of fees over \$25.*

NARA shall require prepayment of search and reproduction fees which are likely to exceed \$25. When the estimated total fee exceeds \$25, the requester will receive notice to prepay and will be advised that if prepayment is not received within 20 workdays from the date of NARA's notice, he or she may incur additional charges for time spent searching for the records an additional time.

**Subpart D—Described Records**

§ 1250.50 *General.*

(a) Except for records made available in accordance with Subparts B and C of this part, NARA promptly will make records available to a requester when the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with Subpart E of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

§ 1250.52 *Procedures for making records available.*

This section sets forth initial procedures for making requested

records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in Part 1254 of this chapter govern.

§ 1250.54 *Submission of requests for described records.*

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, D.C. 20408. Requests shall include the words "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 *Response to initial request.*

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need to extend the time to respond to the request.

§ 1250.58 *Appeal within NARA.*

(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA. The requester shall direct the appeal to the Deputy Archivist, National Archives (ND), Washington, D.C. 20408.

(b) The Deputy Archivist must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester shall appeal in writing and include a brief statement of the reasons he or she thinks NARA should release the records and enclose copies of the initial request and denial. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the Deputy Archivist receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

§ 1250.60 *Extension of time limits.*

In unusual circumstances the Assistant Archivist for Management and Administration may extend the time limits prescribed in § 1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

**Subpart E—Exemptions**

§ 1250.70 *Categories of records exempt from disclosure under the FOIA.*

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of these records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a

criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigatory techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in Part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

#### Subpart F—Subpoenas or Other Legal Demands for NARA Administrative Records

##### § 1250.80 Services of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NSL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at Part 1254 of this chapter.

Dated: May 2, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-12473 Filed 5-23-85; 8:45 am]

BILLING CODE 7515-01-M

#### DEPARTMENT OF THE INTERIOR

##### Office of Hearings and Appeals 43 CFR Part 4

##### Petitions for Award of Costs and Expenses Under Section 525(e) of the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Proposed rule.

**SUMMARY:** The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) proposes to revise its rule at 43 CFR 4.1294(a)(1) to more clearly define the conditions under which costs and expenses (including attorneys' fees) may be awarded, and at 43 CFR 4.1294(b) to conform with a recent decision in which the United States Supreme Court held that absent some degree of success on the merits by a claimant it is not "appropriate" for a court to award attorneys' fees. The affected rules govern petitions for the award of costs and expenses under section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201, *et seq.*

**DATE:** OHA will accept written comments on this proposed rulemaking until 5 p.m. eastern standard time on June 24, 1985.

**ADDRESSES:** Written comments on this proposed rulemaking should be mailed or hand-delivered to the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** John H. Kelly, Deputy Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone: (703) 235-3810.

##### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of § 4.1294(a)(1)
- III. Discussion of § 4.1294(b)
- IV. Future Rulemaking Actions
- V. Procedural Matters

##### I. Background

Section 525(e) of SMCRA, 30 U.S.C. 1275(e), provides that "[w]henver an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial

review or the Secretary, resulting from administrative proceedings, deems proper." (Emphasis added.)

To establish procedures governing petitions for the award of costs and expenses under section 525(e), OHA promulgated rules which appear at 43 CFR 4.1290-4.1298. These existing rules were proposed on April 13, 1978, 43 FR 15441; the final rules were published on August 3, 1978, 43 FR 34376.

The existing rules specify who may file for an award (§ 4.1290), the time and place for filing (§ 4.1291), the contents of a petition for an award (§ 4.1292), the time for filing an answer (§ 4.1293), who may receive an award (§ 4.1294), what an award may include (§ 4.1295), and appeals procedures (§ 4.1296).

The author of this proposed rulemaking is John H. Kelly, Deputy Director, Office of Hearings and Appeals.

##### II. Discussion of § 4.1294(a)(1)

OHA proposes to revise its rule at § 4.1294(a)(1) regarding awards from a permittee to a person who participates in but does not initiate an administrative proceeding reviewing enforcement actions that result in a finding that a violation of the Act, regulations, or permit has occurred, or that an imminent hazard existed. The current regulation provides that the administrative law judge or Board must determine that the person "made a substantial contribution to the full and fair determination of the issues." The regulation does not adequately distinguish the contribution made by such person from that contribution made by an initiating party. It is not the intent of OHA that a person who participates in but does not initiate an administrative proceeding under § 4.1294(a)(1) receive an award if such person's contribution is essentially the same as that of the initiating party. Rather, it is OHA's intent that an award be made to such person only if the person's contribution is separate and distinct from that of the initiating party. In order to notify the public of this distinction, OHA proposes to revise § 4.1294(a)(1) to provide that the substantial contribution made by a person who participates in but does not initiate the administrative proceeding must be "separate and distinct from the contribution made by a person initiating the proceeding."

##### III. Discussion of § 4.1294(b)

A recent decision of the United States Supreme Court in a statutory context similar to § 525(e) of SMCRA held that an award of costs and expenses is conditioned upon a party prevailing in

whole or in part in the underlying proceeding. This holding has led OHA to propose that it revise its rule at § 4.1294(b) to include this condition.

In the case of *Ruckelshaus v. Sierra Club*, 463 U.S. —, 103 S. Ct. 3275 (1983), The Supreme Court interpreted § 307(f) of the Clean Air Act, 42 U.S.C. 7607(f), which provides for an award of the "costs of litigation (including reasonable attorney and expert witness fees) whenever [a court] determines that such an award is appropriate." The Court in *Ruckelshaus* noted that the identical "is appropriate" standard of section 307(f) of the Clean Air Act also appears in section 520(d) of SMCRA, 30 U.S.C. 1270(d), and that its interpretation of section 307(f) controls the construction of section 520(d), 463 U.S. at — n. 1, 103 S. Ct. at 3275 n. 1. While the Court did not consider the equivalent of section 307(f) and the "deems proper" standard of section 525(e) of SMCRA, it did find that the word

"appropriate" \* \* \* means \* \* \* "proper" 463 U.S. at —, 103 S. Ct. at 3275. Thus, it would appear that the Court's interpretation of the "is appropriate" standard in *Ruckelshaus* also applies to the "deems proper" standard of § 525(e).

For these reasons, OHA proposes to revise its rules implementing section 525(e) to conform with the Court's interpretation in *Ruckelshaus* of the "is appropriate" standard.

The Court in *Ruckelshaus* concluded "that the language of [§ 307(f) of the Clean Air Act], read in the light of the historic principles of fee-shifting in this and other countries, requires the conclusion that some success on the merits be obtained before a party becomes eligible for a fee award \* \* \*." 463 U.S. at —, 103 S. Ct. 3276. "Hence, we hold that, absent some degree of success on the merits by the claimant, it is not 'appropriate' for a federal court to award attorneys fees \* \* \*." 463 U.S. at —, 103 S. Ct. at 3281. In view of this clear holding by the court, it is reasonable to interpret section 525(e) of SMCRA as requiring a petitioner to prevail in whole or in part, achieving at least some degree of success on the merits before and award of costs and expenses under this section may be "deem[ed] proper."

While OHA as an alternative might conform with *Ruckelshaus* by interpreting the existing rules implementing section 525(e) on a case-by-case basis in administrative proceedings, the recent decision of the Interior Board of Land Appeals in *Donald St. Clair*, 84 IBLA 236 (1985), demonstrates the difficulty in reaching a consensus on the application of *Ruckelshaus*. Therefore, to inform the public of this interpretation of section

525(e), and to avoid any inconsistency in its application, OHA proposes to revise its rule at 43 CFR 4.1294(b) accordingly. Section 4.1294 provides in part that appropriate costs and expenses may be awarded to specified parties in various circumstances. Currently § 4.1294(b) provides that awards may be made to persons who "made a substantial contribution to the full and fair determination of the issues," but does not contain criteria with regard to the degree of success on the merits to be achieved for such awards. In view of *Ruckelshaus*, OHA proposes to revise paragraph (b) of § 4.1294 to state explicitly that eligibility to receive an award is "subject to the condition that the person shall have prevailed in whole or in part, achieving at least some degree of success on the merits."

#### IV. Future Rulemaking Actions

On November 20, 1980, a number of western states filed a petition for rulemaking with the Office of Surface Mining Reclamation and Enforcement (OSM) requesting repeal of 43 CFR 4.1294(b) as it applies to the states under 30 CFR 840.15. Although OSM sought public comment on the petition (46 FR 58464 (Dec. 1, 1981)), the petition has not been decided. Issuance of this proposed rule is not intended to preclude further examination of OHA's rules in 43 CFR 4.1290-4.1296 governing the award of attorney's fees in view of the pending rulemaking petition, particularly the question of the waiver of sovereign immunity.

#### V. Procedural Matters

##### *Federal Paperwork Reduction Act*

The proposed rules do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

##### *Executive Order 12291*

The DOI has examined these proposed rules according to the criteria of Executive Order 12291 (Feb. 17, 1981) and has determined that they are not major and do not require a regulatory impact analysis.

##### *Regulatory Flexibility Act*

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities.

##### *National Environmental Policy Act*

OHA has prepared a draft environmental assessment (EA) on the proposed rules and has made an interim

finding that they would not significantly affect the quality of the human environment. The draft EA is on file in the OHA Administrative Record at the address listed previously (see "ADDRESSES"). A final EA will be completed and a final finding made on the significance of any resulting impacts prior to issuance of the final rules.

#### List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Lawyers, Surface mining.

Dated: April 10, 1985.

Ann Dore McLaughlin,  
Under Secretary.

Accordingly, it is proposed to amend 43 CFR Part 4, Subpart L, as follows:

#### PART 4—DEPARTMENTAL HEARINGS AND APPEALS PROCEDURES

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority citation for Part 4, Subpart L, continues to read as follows:

Authority: Sec. 201, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 4.1294 is amended by revising paragraphs (a)(1) and (b) to read as follows:

##### § 4.1294 Who may receive an award.

\* \* \* \* \*

(a) \* \* \*

(1) The person initiates any administrative proceedings reviewing enforcement actions upon a finding that a violation of the Act, regulations, or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the administrative law judge or Board determines that the person made a substantial contribution to the full and fair determination of the issues which was separate and distinct from that contribution made by a person initiating the proceeding; or

\* \* \* \* \*

(b) To any person other than an permittee or his representative from OMS, if the person initiates or participates in any proceeding under the Act, subject to the condition that the person shall have prevailed in whole or in part, achieving at least some degree of success on the merits.

\* \* \* \* \*

[FR Doc. 85-12321 Filed 5-23-85; 8:45 am]  
BILLING CODE 4310-10-M

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

### 45 CFR Part 233

#### Aid to Families With Dependent Children; Disregard of Support and Maintenance Assistance Based on Need

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed regulations would amend the interim final home energy regulations published July 21, 1983 (48 FR 33302) to reflect the changes in section 402(a)(36) of the Social Security Act as amended by section 404 of Pub. L. 98-21 (effective May 1, 1983 through September 30, 1984) and section 2639 of Pub. L. 98-369 (effective October 1, 1984 through September 30, 1987). The proposed regulations provide that, at State option, support and maintenance assistance (including home energy assistance) furnished on or after May 1, 1983 and before October 1, 1987 which has been certified by the State as both provided on the basis of need and (1) furnished in kind by a private nonprofit organization, or (2) furnished in cash or in kind by an entity providing home energy whose revenues are derived on a rate-of-return basis regulated by the State or Federal governmental body, or any supplier of home heating gas or oil, or a municipal utility providing home energy may be excluded as income and resources in the Aid to Families with Dependent Children program.

**DATES:** Interested persons and agencies are invited to submit written comments concerning these regulations no later than July 23, 1985.

**ADDRESSES:** Prior to final adoption of the proposed regulations consideration will be given to any comments submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B-422, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Levering, Room B-442, Transpoint Building, 2100 Second Street SW., Washington, D.C. 20201, telephone (202) 245-2637.

## SUPPLEMENTARY INFORMATION:

### Discussion of Statutory Provisions

Section 545 of Pub. L. 97-424 added section 402(a)(36) to the Social Security Act which provided that, at State option, certain home energy assistance received from February 1, 1983 through June 30, 1985 may be excluded in the Aid to Families With Dependent Children (AFDC) Program. Regulatory changes needed to implement this legislative provision were published in the *Federal Register* as interim rules on July 21, 1983 (48 FR 33302-33305.) Comments which were received pursuant to the interim regulations on disregard of home energy assistance in the AFDC program will be addressed in the final regulations which implement the proposed rules herein.

Section 404 of Pub. L. 98-21 (the Social Security Amendments of 1983), enacted on April 20, 1983, amended section 402(a)(36) as added by section 545 of Pub. L. 97-424. Section 402(a)(36) as amended by section 404 provides for the exclusion of certain support and maintenance assistance, at State option, including assistance received to assist in meeting the costs of home energy. Section 404 is effective from May 1, 1983 through September 30, 1984. We informed States of the statutory provisions of section 404 of Pub. L. 98-21.

Section 2639 of Pub. L. 98-369 (the Deficit Reduction Act of 1984) was enacted on July 18, 1984, and becomes effective October 1, 1984. Section 2639 repeals both section 545 of Pub. L. 97-424 and section 404 of Pub. L. 98-21. In addition, section 2639 amends section 402(a)(36) of the Social Security Act for the period October 1, 1984 through September 30, 1987. The new provision is identical to section 404 of Pub. L. 98-21 except for the effective dates.

### Discussion of Regulatory Provisions

These proposed regulations are set forth to implement changes enacted by section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369. The regulations provide that, at State option, support and maintenance assistance (including home energy assistance) furnished from May 1, 1983 through September 30, 1987 which has been certified by the State as both provided on the basis of need and (1) provided in kind by a private nonprofit organization; or (2) provided either in cash or in kind by a supplier of home heating gas or oil, a municipal utility providing home energy, or an entity providing home energy whose revenues are derived on a rate-of-return basis regulated by a State or Federal governmental body may be excluded from income and resources.

These proposed regulations are contained in §§ 233.20 and 233.53. Section 233.20 would be amended by revising subparagraph § 233.20 (a)(3)(xvi) to require that support and maintenance assistance (including home energy assistance) be treated in accordance with the rules set forth in § 233.53. Section 233.53 contains the State plan requirements and definitions governing the treatment of support and maintenance assistance (including home energy assistance) under the AFDC program.

### Discussion of Options

A discussion follows of the major options we considered in developing these regulations.

In amending section 402(a)(36) of the Act, Congress gave no indication that it intended the disregard of support and maintenance assistance to be different from the previously enacted disregard of home energy assistance. Therefore, we concluded that, to the extent possible, the same definitions and policy positions would be adopted.

### Definition of Terms

The terms used in the support and maintenance assistance exclusion are not defined in the statute. Generally, they are the same terms used in the previous home energy assistance statute (section 545 of Pub. L. 97-424.) Therefore, we have defined such terms consistent with the definitions provided in § 233.53(b) of the interim regulations on disregard of home energy assistance in the AFDC program. We considered using the same definition of support and maintenance previously established under the SSI program for the AFDC program, since there was no existing concept of "support and maintenance" under the AFDC program. The SSI concept of "support and maintenance" is limited to food, clothing, and shelter under a longstanding definition. We decided, however, that using the SSI definition might result in some States not having the needed flexibility to exclude assistance that meets the needs served by the AFDC program and would otherwise be countable in determining eligibility and the amount of benefits under the AFDC program. Therefore, we looked to the existing AFDC concept of "basic needs" and used this concept in arriving at a definition of support and maintenance for the AFDC program. Support and maintenance assistance for the AFDC program is defined as any assistance that is designed to meet the expenses of day-to-day living. This definition recognizes the AFDC program's longstanding concept of State-

established need standards, which may go beyond food, clothing, and shelter, and accommodates the existing variations among State determinations of basic needs. Since the statute provides that support and maintenance assistance includes assistance to meet the costs of home energy, the definition of support and maintenance assistance includes home energy assistance. Home energy assistance was defined in the interim final regulations that implemented section 545 of Pub. L. 97-424 to mean "any assistance related to home energy." We have determined that this definition is not sufficiently explicit. Therefore, the definition of home energy assistance have been included in these proposed regulations to more distinctly set out what can be covered by the disregard provision. Home energy assistance is defined in these proposed regulations as any assistance related to meeting the costs of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc. Additionally, we have added a definition of in kind assistance in response to requests for clarification of the term. In kind assistance means aid furnished in any form except direct cash payments to an applicant or recipient or direct payments to an applicant or recipient through financial instruments which are convertible to cash. Assistance furnished by a two-party check to an applicant or recipient, and payments made directly to a vendor on behalf of an applicant or recipient are examples of in kind assistance.

#### Further Considerations

Although, generally, maximum flexibility will be allowed, the rate-of-return entities that can provide excludable support and maintenance assistance will be limited to those which supply home energy in order to conform to the SSI statutory provisions which restrict rate-of-return entities to those providing home energy. Nothing in the legislative history indicates the Congress intended a broader exclusion for support and maintenance assistance provided by rate-of-return entities under the AFDC program.

Additionally, since the exclusion in section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369 is optional in AFDC, but mandatory in SSI, the issue of the treatment of support and maintenance assistance provided joint AFDC/SSI households was considered.

It was determined that, where the State does not elect to exclude support and maintenance assistance or when treatment of support and maintenance is different under the two programs, the State will be required to prorate the assistance furnished to the household in order to determine what portion is attributable to the AFDC members of the household. Further, we considered the question of how support and maintenance assistance which is not counted as income should be treated for resources purposes. We concluded that States will be required to exclude support and maintenance assistance as resources, if they elect the option not to count the assistance as income.

The issue of how support and maintenance assistance which is provided to any individual whose income or resources are deemed to an AFDC assistance unit was also considered. We believe that it would be contrary to the purpose of the statutory provision to deem such assistance as income to the AFDC unit. Therefore, we concluded that support and maintenance assistance furnished to or on behalf of the parent, spouse, stepparent, or alien sponsor whose income is considered in determining the eligibility of an AFDC unit will be excluded from income and resources to the same extent as support and maintenance assistance that is furnished to or on behalf of persons who are applying for or receiving AFDC.

#### Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and we determined that they do not create costs of \$100 million or more yearly, or otherwise meet the threshold criteria of the Executive Order. While AFDC benefit payments will be greater, these increased costs are due primarily to decisions made in the legislative process. Cost impacts directly resulting from the regulations themselves are minor. For these reasons, the Secretary has determined that a regulatory impact analysis is not required.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in these proposed regulations will be submitted for approval by the Office of Management and Budget (OMB). These provisions are the State plan requirements in §§ 233.20(a)(3) (xvi) and 233.53. We will seek OMB approval for the State plan requirements discussed in the AFDC regulations. These requirements will not be effective until approved by OMB.

#### Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

These regulations are issued under the authority of sections 1102 of the Social Security Act, as amended, 42 U.S.C. 1302, section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369.

(Catalog of Federal Domestic Assistance Program 13.808, Public Assistance Maintenance Assistance (State Aid))

#### List of Subjects in 45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs—Social programs, Public assistance programs, Reporting requirements.

Dated: Oct 5, 1984.

Martha A. McSteen,  
Acting Commissioner of Social Security.

Approved: Feb 8, 1985.

Margaret M. Heckler,  
Secretary of Health and Human Services.

#### PART 233—[AMENDED]

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 233 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

#### § 233.20 [Amended]

1a. Section 233.20 is amended by revising paragraph (a)(3)(xvi) to read as follows:

- (a) \* \* \*
- (3) \* \* \*

(xvi) For AFDC, provide that in considering the availability of income and resources, support and maintenance assistance (including home energy assistance) will be taken into account in accordance with § 233.53.

2. Section 233.53 is revised to read as follows:

§ 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.

(a) General. Section 404 of Pub. L. 98-21 and section 2639 of Pub. L. 98-369 provide that, at State option, certain support and maintenance assistance (including home energy assistance) furnished from May 1, 1983 through September 30, 1987 may be excluded from income and resources.

(b) Definitions. The following definitions are limited to the support and maintenance assistance provisions of this section.

"Appropriate State agency" means the agency designated by the chief executive officer of the State to handle the State's responsibilities with respect to support and maintenance assistance under paragraph (c) of this section.

"Based on need" means that the assistance is given to or on behalf of an applicant or recipient for the purpose of support and maintenance (including home energy) and meets the criteria established by the State for determining the need for such assistance.

"In kind assistance" means assistance furnished in any form except direct cash payments to an applicant or recipient or direct payments to an applicant or recipient through other financial instruments which are convertible to cash.

"Private, nonprofit organization" means a religious, charitable, educational, or other organization such as described in section 501(c) of the Internal Revenue Code of 1954. (Actual tax exempt certification by IRS is not necessary).

"Rate-of-return entry" means an entity whose revenues are primarily received from the entity's charges to the public for goods or services, and such charges are based on rates established and regulated by a State or Federal governmental body.

"Support and maintenance assistance" means any assistance designed to meet the expenses of day to day living. Support and maintenance assistance includes home energy assistance. Home energy assistance means any assistance related to meeting the cost of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc.

(c) Requirements for State Plans. If a State elects to exclude from income and resources support and maintenance assistance, the State plan for AFDC must as specified below:

(1) Provide that an appropriate State agency will certify that support and maintenance assistance is based on need (as defined in paragraph (b) of this section), and that such certifications will be accepted for purposes of determining eligibility for and the amount of payments under the AFDC program.

(2) Provide that in joint AFDC/SSI households, support and maintenance assistance furnished to the household which is not excluded under this paragraph will be prorated on a reasonable basis to determine the amount provided to the AFDC assistance unit. The State plan must describe the method that will be used to prorate the assistance in these circumstances.

(3) Provide that the types and amount of support and maintenance assistance that are excluded when received by an AFDC applicant or recipient will also be excluded in determining the income and resources of a parent, stepparent, spouse or alien sponsor whose income is considered available to an AFDC applicant or recipient.

(4) From May 1, 1983 through September 30, 1987, provide that the State may exclude from income and resources, support and maintenance assistance (as defined in paragraph (b) of this section) which the appropriate State agency certifies is based on need, if the assistance is furnished by:

(i) A supplier of home heating gas or oil, regardless of whether the assistance is in cash or in kind; or

(ii) A municipal utility providing home energy, regardless of whether the assistance is in cash or in kind; or

(iii) A rate-of-return entity which provides home energy, regardless of whether the assistance is in cash or in kind; or

(iv) A private nonprofit organization, but only if such assistance is in kind.

(5) Provide that, if the State elects to exclude from income and resources any support and maintenance assistance, the State plan must:

(i) Describe the criteria that will be used to determine the need for the assistance;

(ii) Identify the types and amounts of assistance which will be excluded;

(iii) Provide that any limitations will be made on a reasonable basis; and

(iv) Provide that the types and amount of support and maintenance assistance that are excluded when received by an AFDC applicant or recipient will also be excluded in determining the income and resources of a parent, stepparent, spouse or alien sponsor whose income is considered available to an AFDC applicant or recipient.

[FR Doc. 85-10942 Filed 5-23-85; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 254

#### Award and Administration of Operating-Differential Subsidy (ODS) for Dry Bulk Cargo Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) is withdrawing a notice of proposed rulemaking (NPRM) published in 1979. The NPRM proposes a new 46 CFR Part 254 governing the award and payment of ODS to operators of dry bulk cargo vessels, under authority in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 171-1180). Since the Maritime Administration is not now approving any new ODS applications it believes that this separate rulemaking for dry bulk cargo vessels is no longer necessary.

**FOR FURTHER INFORMATION CONTACT:** Fred Larson, Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street SW., Room 8114, Washington, D.C. 20590, Telephone (202) 382-6036.

**SUPPLEMENTARY INFORMATION:** On September 8, 1979, MARAD published a NPRM (44 FR 52002) the proposed provisions for the award and payment of ODS to United States citizens who operate dry bulk cargo vessels in essential services in the foreign commerce of the United States. Included in the proposed regulations was the method of calculating the various components of subsidy, e.g., wages and subsistence of officers and crew, and insurance premiums. Since it is not now approving any new ODS applications, MARAD believes that this separate rulemaking for dry bulk cargo vessels is no longer necessary. Accordingly, MARAD has decided to terminate rulemaking action on the proposal.

(46 U.S.C. 1114(b); 49 CFR 1.66)

Dated: May 21, 1985.

By Order of the Maritime Administrator,  
Georgia P. Stamas,  
Secretary, Maritime Administration.

[FR Doc. 85-12609 Filed 5-23-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS  
COMMISSION

## 47 CFR Part 73

[MM Docket No. 85-137 RM-4792]

## FM Broadcast Stations in Rantoul, IL

AGENCY: Federal Communications  
Commission.

ACTION: Proposed rule.

**SUMMARY:** This action proposes to allocate Channel 278A to Rantoul, Illinois, in response to a petition filed by J. Darwin Johnson.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**DATE:** Comments must be filed on or before July 5, 1985, and reply comments must be filed on or before July 22, 1985.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

## List of Subjects in 47 CFR Part 73

Radio broadcasting.

## Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments FM Broadcast Stations, (Rantoul, Illinois), MM Docket No. 85-137, RM-4792.

Adopted: May 6, 1985.

Released: May 14, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by J. Darwin Johnson ("petitioner"), requesting the allotment of Channel 278A<sup>1</sup> to Rantoul, Illinois, as that community's second FM service. Petitioner states that if the channel is allotted, he will apply for authority to build and operate a station.

2. Channel 278A can be assigned to Rantoul in compliance with the minimum distance separation requirements. In view of the fact that the proposed allotment could provide a second FM broadcast service to Rantoul, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Rantoul, IL	237A	237A, and 278A.

<sup>1</sup>The petition, as filed, requested Channel 261A. However, that channel would be short spaced to Channel 202B1, Champaign, Illinois (recently allocated in the omnibus proceeding, Docket 84-231, *First Report and Order*, 50 FR 3514, published January 25, 1985). Our staff engineering study indicates that Channel 278A can be considered here.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before July 5, 1985, and reply comments on or before July 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Mr. J. Darwin Johnson, 1283 Parker Place, Elk Grove Village, Illinois 60007.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

**Appendix**

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it

is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of

service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 85-12525 Filed 5-23-85; 8:45 am]

BILLING CODE 6712-01-M

# Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Meeting

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Advisory Council on Historic Preservation will meet in the West Conference Room, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C., on Monday, June 10, 1985.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Monday, June 10, 1985, West Conference Room, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C., 9:30 a.m.

Call to Order

Chairman's Welcome

Consideration of the Minutes of the February 15, 1985, Meeting

I. Report of the Executive Director

A. Budget

B. 1986 Annual Report

C. Training

II. Report of the Regulations Task Force

Recess for Lunch

12:30 p.m.

III. Report of the General Counsel

IV. Report of the Office of Cultural Resource

Preservation

VI. New Business

**DATE:** The meeting will begin at 9:30 a.m., Monday, June 10, 1985.

### FOR FURTHER INFORMATION CONTACT:

Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, D.C. 20004, 202-786-0503.

Dated: May 20, 1985.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 85-12554 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-10-M

## DEPARTMENT OF AGRICULTURE

### Subcommittee for Alcohol Fuels Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Alcohol Fuels Research, Technical Advisory Committee for Science and Education Research Grants Program.

Date: June 26-27, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture,

Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide

advice and recommendation concerning

support for research in the Alcohol Fuels

Research program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Contact Person: Robert C. Koeppen, Acting Associate Program Manager, Competitive Research Grants Office, Office of Grants and

Federal Register

Vol. 50, No. 101

Friday, May 24, 1985

Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 14th day of May 1985.

Robert C. Koeppen,

Executive Secretary, Subcommittee for Alcohol Fuels Research.

[FR Doc. 85-12615 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-MT-M

### Subcommittee for Biotechnology Molecular Biology (Plants); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Biotechnology Molecular Biology (Plants), Technical Advisory Committee for Science and Education Research Grants Program.

Date: July 9-12, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Biotechnology Molecular Biology (Plants) program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Contact Person: Machi F. Dilworth, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 15th day of May 1985.

Machi F. Dilworth,

Executive Secretary, Subcommittee for Biotechnology Molecular Biology (Plants).

[FR Doc. 85-12614 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-MT-M

### Subcommittee for Biotechnology Response to Biological Stress; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Biotechnology Response to Biological Stress, Technical Advisory Committee for Science and Education Research Grants Program.

Date: July 8-10, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Biotechnology Response to Biological Stress.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(6), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.

Contact Person: Anne Holiday Schauer, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 14th day of May 1985.

Anne Holiday Schauer,

Executive Secretary, Subcommittee for Biotechnology Response to Biological Stress.

[FR Doc. 85-12613 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-MT-M

### Agricultural Stabilization and Conservation Service

#### 1985-86 National Marketing Quota for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination of 1985-86 marketing quota.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on January 24, 1985, with respect to the 1985 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended. In addition to other determinations, the Secretary of Agriculture determined that the 1985-86 national marketing quota for burley

tobacco shall be 525 million pounds. The Secretary is required by statute to announce the 1985-86 national marketing quota by February 1, 1985.

EFFECTIVE DATE: January 24, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This notice of determination is issued in accordance with the Agricultural

Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), in order to announce for the 1985-86 marketing year for burley tobacco the following:

1. The amount of the reserve supply level;
  2. The amount of the total supply;
  3. The amount of the national marketing quota;
  4. The national factor; and
  5. The national reserve:
- A. For establishing marketing quotas for new farms, and
- B. For making corrections and adjusting inequities in marketing quotas for old farms.

Marketing quotas on a poundage basis were proclaimed by the Secretary of Agriculture for burley tobacco for the 1983-84, 1984-85, and 1985-86 marketing years (See 48 FR 7228). Since at least one-third of the burley tobacco producers voting in a marketing quota referendum during the period February 28 through March 3, 1983, did not vote to disapprove marketing quotas, such marketing quotas are in effect for the 1985-86 marketing year (See 48 FR 28303).

The determinations by the Secretary as set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after consideration of data, views, and recommendations received from burley tobacco producers and others pursuant to a Notice of Proposed Determination which was published on November 5, 1984 (49 FR 44225).

#### Discussion of Comments

During the comment period, 47 written responses were received from producers, farm groups, manufacturers, and a State Department of Agriculture. Thirteen of the 27 comments that made recommendations with respect to the size of the 1985-86 marketing quota favored maintaining it at the 1984-85 level. The remaining 10 which made specific recommendations recommended a 10 percent reduction in the quota, noting that supplies were excessive. In addition, one comment recommended an unspecified increase in quota. The other 20 responses limited their comments to issues other than size of the quota.

A meeting was held in the burley tobacco producing area to give producers and others a further opportunity to express their views. Nine of the 11 persons in attendance who expressed views favored a 10 percent reduction in quota, while the other 2 asked that quotas remain unchanged.

Section 319(c) of the Act provide, in part, that the national marketing quota

which is determined for burley tobacco for any marketing year shall be the amount of burley tobacco which is produced in the United States which the Secretary estimates will be utilized domestically and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 10 percent of such estimated domestic utilization and exports. For each marketing year for which marketing quotas are in effect under section 319, the Secretary, in his discretion, may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota. The national reserve is to be available for making corrections and adjusting inequities in farm marketing quotas and for establishing marketing quotas for new farms.

Section 319(e) of the Act provided, in part, that the farm marketing quota for the 1985-86 marketing year shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for the 1985-86 marketing year. However, such national factor shall be not less than 90 percent.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the

average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The reserve supply level is 1,542 million pounds, based on a normal year's domestic consumption of 450 million pounds and a normal year's exports of 140 million pounds. The average domestic usage for the past 10 marketing years is 481 million pounds. Domestic use has trended downward in recent years. The 10-year average for exports is 114 million pounds. Exports averaged 138 million pounds during the 1981-82 period and are expected to rebound from the 112 million pounds exported in the drought-stricken 1983 marketing year, as foreign manufacturers continue to upgrade their blends. In view of these data and estimates, a reserve supply level of 1,542 million pounds has been determined to be reasonable.

The total supply for the 1984-85 marketing year (carryover stocks as of October 1, 1984 plus estimated marketings of the 1984 crop) is 2,033 million pounds. This is 491 million pounds above the reserve supply level.

Total disappearance for the 1985-86 marketing year is estimated at 540 million pounds. While it would appear appropriate to establish a national marketing quota for the 1985-86 marketing year at significantly less than estimated disappearance, section 319(e) of the Act provides that the sum of the farm marketing quotas for such marketing year cannot be less than 90 percent of the farm marketing quotas for the previous marketing year. Accordingly, the national marketing quota for burley tobacco for the marketing year beginning October 1, 1985 is determined to be 525 million pounds. The sum of the preliminary farm marketing quotas for farms eligible for the 1985-86 marketing year is 582,813,816 pounds. A quota of 525 million pounds, less a national reserve of 465,000 pounds, results in a national factor for burley tobacco for the 1985-86 marketing year of 0.90.

The purpose of this notice is to affirm the determination of the national marketing quota for the 1985 crop of burley tobacco, as well as related determinations, which were announced by the Secretary on January 24, 1985.

#### Determinations 1985-86 Marketing Year

Accordingly, the following determinations have been made with respect to burley tobacco for the

marketing year beginning October 1, 1985:

(a) A national marketing quota of 525 million pounds.

(b) A reserve supply level of 1,542 million pounds.

(c) A national reserve of 465,000 pounds.

(d) A national factor of 0.90.

Authority: Secs. 301, 319, 375, 52 Stat. 38, as amended, 85 Stat. 23, 52 Stat. 66, as amended (7 U.S.C. 1301, 1314e, 1375).

Signed at Washington, D.C., on May 17, 1985.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-12557 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-06-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-469-405]

#### Antidumping Duty Order; Oil Country Tubular Goods From Spain

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

**SUMMARY:** In separate investigations concerning oil country tubular goods (OCTG) from Spain, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that OCTG from Spain are being sold at less than fair value and that sales of OCTG from Spain are materially injuring a United States industry. Additionally, the Department and the ITC found that "critical circumstances" exist with respect to OCTG from Spain. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of OCTG from Spain made on or after October 18, 1984, 90 days prior to the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Raymond G. Busen, Office of

Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2830.

**SUPPLEMENTARY INFORMATION:** The merchandise covered by this order is OCTG, which is currently classifiable under item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 16, 1985, the Department published its preliminary determination that there was reason to believe or suspect that OCTG from Spain were being sold at less than fair value (50 FR 2315). On March 29, 1985, the Department published its final determination that these imports were being sold at less than fair value (50 FR 12599).

On May 13, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG from Spain. These antidumping duties will be assessed on all unliquidated entries of OCTG entered, or withdrawn from warehouse, for consumption on or after October 18, 1984, 90 days prior to the date on which the Department published its "Preliminary Determination" notice in the *Federal Register* (50 FR 2315).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

<i>Manufacturers/Producers/Exporters Weighted-Average Margins (Percent)</i>	
Altos Hornos de Vizcaya, S.A. (AHV).....	83.5
Tubos Reunidos, S.A. (TR).....	70.1
All other manufacturers/producers exporters.....	76.8

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization". This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, the level of export subsidies, as determined in the countervailing duty order on OCTG from Spain (50 FR 5287), will be subtracted from the dumping margin for deposit or bonding purposes.

This determination constitutes an antidumping order with respect to OCTG from Spain, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

*Deputy Assistant Secretary for Import Administration.*

May 17, 1985.

[FR Doc. 85-12624 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-501]

#### **Termination of Countervailing Duty Investigation; Portable Aluminum Ladders and Certain Components of Ladders from Mexico**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On May 2, 1985, the petitioner representing the U.S. producers of portable aluminum ladders and certain components of ladders withdrew its countervailing duty petition, filed on March 26, 1985, on portable aluminum ladders and certain components of ladders from Mexico. Based on the withdrawal, we are terminating the countervailing duty investigation.

**EFFECTIVE DATE:** May 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-1785.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

On March 26, 1985, we received a petition from R.D. Werner Co., Inc., of Greenville, Pennsylvania, supported by the Metal Ladders Manufacturers Association, on behalf of the U.S. industry producing portable aluminum ladders and certain components of ladders. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers, manufacturers, or exporters in Mexico receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on April 15, 1985, we initiated this investigation (50 FR 15950).

On April 23, 1985, the Office of United States Trade Representative announced that Mexico was a "country under the Agreement, as set out in section 701(b) of the Act. As a result, Title VII of the Act became applicable to the pending countervailing duty investigation. According to section 102 of the Trade Agreements Act of 1979, once Title VII becomes applicable, any pending investigation under section 303 of the Act must be terminated. Where an initiation, but not a preliminary determination, has been made under section 303, the case is to be treated as if it were initiated under section 702 on the day Title VII first applied to that country. Had the petition not been withdrawn, we would have terminated the investigation we initiated on April 15, 1985 and initiated another countervailing duty investigation, effective April 23, 1985.

##### **Scope of Terminated Investigation**

The products covered by this investigation are portable aluminum ladders and certain components of ladders. The term ladder includes:

- Step Ladders.
- Extension Ladders.
- Step Stools.
- Platform Ladders.
- Single Ladders.

- Combination Ladders.
- Trestle Ladders.
- Extension Trestle Ladders.

Aluminum ladders are currently classified under item number 657.4015, of the *Tariff Schedules of the United States, Annotated* (TSUSA). Other articles of aluminum not coated with precious metal are classified under TSUSA number 657.4080 and include ladder components. Components of ladders and step stools include: steps, side rails, braces, pail shelves, spreaders, D-rungs, and rung-locks. The scope of this investigation only includes such components when made of aluminum or aluminum alloys. Aluminum step stools and components of aluminum step stools are currently classified as other furniture and parts thereof not specifically provided for, under TSUSA number 727.70.

#### Withdrawal of Petition

On May 2, 1985, petitioner notified us that it was withdrawing its petition, and requested that this investigation be terminated. Under section 704(a) of the Act (19 U.S.C. 1671(a)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation of petitioner's withdrawal and our intention to terminate. We have notified the parties of petitioner's withdrawal of the petition and of our intention to terminate. Pursuant to § 355.30(a) of our regulations (19 CFR 355.30(a)), we have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of portable aluminum ladders and certain components of ladders from Mexico.

Alan F. Homer,

Deputy Assistant Secretary for Import Administration.

May 16, 1985.

[FR Doc. 85-12542 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DS-M

Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket number: 83-134R. Applicant: Indiana University, Purdue University at Indianapolis. Instrument: High Energy Medical Electron Accelerator. Original notice of this resubmitted application was published in the *Federal Register* of February 28, 1983.

Docket number: 85-091R. Applicant: Microelectronics Center of North Carolina, 3021 Cornwallis Road, Post Office Box 12889, Research Triangle Park, NC 27709. Instrument: Excimer Laser, with Accessories. Manufacturer: Lumonics Incorporated, Canada. Intended use: Laser processing of electronic materials such as silicon to be used for advanced semiconducting devices. Experiments to be conducted will involve photodecomposition of metal compounds, annealing of displacement damage, and formation of insulating layers on semiconductors to achieve novel materials properties and advanced device structures. Application received by Commissioner of Customs: February 7, 1985.

Docket number: 85-154. Applicant: Center for Energy and Environment Research, University of Puerto Rico, GPO Box 3682, San Juan, PR 00936. Instrument: Infrared Gas Analyzer for CO<sub>2</sub>, Type 225, Mark 3. Manufacturer: Analytical Development Co., Ltd., United Kingdom. Intended Use: Studies of plant photosynthesis and respiration, soil respiration, and the concentration of carbon dioxide gas in air within forested areas. Investigations will be conducted to examine the concentrations of CO<sub>2</sub> emitted or fixed by distinct ecosystem components to gauge the carbon flux through the tropical forest. The objectives of this research are to further elucidate the structure and function of natural ecosystems and their response to man-induced and natural environmental change. Application received by Commissioner of Customs: April 9, 1985.

Docket number: 85-155. Applicant: University of Michigan, Department of Pharmacology, M614 Medical Science Building 1, Ann Arbor, MI 48109-0010. Instrument: Microwave Instrument, Model NJE 2603-10 KW with Accessories. Manufacturer: New Japan Radio Co., Ltd., Japan. Intended use: Investigation to determine the levels of chemical messengers in the brains of small laboratory animals such as the rat using techniques that involve heat inactivation of brain tissue in order to

do chemical analyses. Application received by Commissioner of Customs: April 8, 1985.

Docket number: 85-156. Applicant: Forsyth Dental Center, 140 Fenway, Boston, MA 02115. Instrument: Electron Microscope, Model JEM-1200 EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Studies of the following materials obtained either from experimental animals or patients with various oral disorders:

Tooth enamel, oral microbiota, tissues and microorganisms involved with periodontal disease, physical chemistry of remineralizing enamel, structure of bone as it relates to aging, immunologic contact structures in salivary gland lymphoid tissue, assessment of periodontal therapy by controlled local drug delivery, and the structure of DNA as related to replacement therapy of dental caries. In addition, the instrument will be used for training post-doctoral students in the use of this instrument and related techniques on a one-to-one basis. Application received by Commissioner of Customs: April 4, 1985.

Docket number: 85-157. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Surface Analysis System, Model X Sam 800. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: Investigation of the electronic and structural properties of thin films and superlattices by auger electron spectroscopy, x-ray photoelectron spectroscopy and low energy electron diffraction. Training of postdoctoral fellows, graduate and undergraduate students. Application received by Commissioners of Customs: April 11, 1985.

Docket number: 85-158. Applicant: The Pennsylvania State University, Department of Mineral Engineering, 108 Steidle Building, University Park, PA 16802. Instrument: Electrophoresis Apparatus, Model Mark II with Accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use: Fundamental studies of flocculation and related processes of mineral particles including coal, metal ores, clays, etc. Experiments to be conducted will involve studies of the role of surface charge in flocculation and other unit operations involved in mineral processing, and evaluation of the effects of solution chemistry, pH, reagent additions, etc., on the nature of the electrical double layer at solid-liquid interfaces. The instrument will also be used for educational purposes in the courses Mn Pr 425, Interfacial Phenomena and Flotation and Mn Pr

#### Applications For Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the

502, Froth Flotation and Agglomeration. Application received by Commissioner of Customs: April 11, 1985.

Docket number: 85-159. Applicant: Michigan State University, Metallurgy, Mechanics and Materials Science, College of Engineering, East Lansing, MI 48824. Instrument: Electron Microscope, Model H-800-3. Manufacturer: Hitachi, Japan. Intended use: Research related to microstructure and structure of interfaces in the high resolution mode. Dislocation structure, dislocation interaction and Burgers vector determination will be made. The instrument will also be used to train material scientists to use a transmission electron microscope. Application received by Commissioner of Customs: April 11, 1985.

Docket number: 85-160. Applicant: U.S. Department of Agriculture, Agricultural Research Service, W-321 Turner Hall, 1102 S. Goodwin, Urbana, IL 61801. Instrument: Oxygen Electrode Unit, Model DWL. Manufacturer: Hansatech Limited, United Kingdom. Intended use: The instrument will be used to measure the oxygen exchange and fluorescence of chloroplasts, leaf protoplasts, and algae to better understand photosynthesis. Application received by Commissioner of Customs: April 11, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-12541 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DS-M

#### Decision on Application for Duty-Free Entry of Scientific Instrument; Dartmouth College

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket number: 85-073. Applicant: Dartmouth College, Hanover, NH 03755. Instrument: FT-Spectrometer, Model DA3. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 50 FR 4996.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is

intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an unapodized resolution of  $0.002 \text{ cm}^{-1}$ . The National Bureau of Standards advises in its memorandum dated March 27, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use. We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-12540 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DS-M

#### [Case No. 664]

#### Noron S.A.; Order Temporarily Denying Export Privileges

The United States Department of Commerce (the Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Parts 368-399 (1985)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Noron S.A. of 40 Avenue de Broqueville, 1200 Brussels, Belgium (hereinafter referred to as respondent).

The Department states that the respondent is under investigation for violating the Regulations. The Department states further that the investigation gives it reason to believe: (1) That respondent reexported computer-related equipment, including specially-designed U.S.-origin components, from Belgium to Switzerland without the reexport authorization from the Department required by § 374.1 of the Regulations; (2) that an attempt was made to divert the computer-related equipment from Switzerland to Sofia, Bulgaria; (3) that respondent concealed material facts from officials of a United States Government agency in the course of the investigation; and (4) that the respondent may engage in transactions involving U.S.-origin commodities or technical data contrary to the Regulations in the future, unless appropriate action is taken to preclude such attempts.

Based on the showing made by the Department, I find that an order temporarily denying all export privileges to the respondent, and to parties related to it, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1982)), and the Regulations,<sup>1</sup> and to permit completion of the investigation.

Anyone who is now or may in the future be dealing with the above-named respondent, or with anyone who is now or may be subsequently named as a related party, in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby

#### Ordered

I. All outstanding validated export licenses in which respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondent, its successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participating prohibited in any such transaction, either in the United States or aboard, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or

<sup>1</sup> The authority granted by the Act terminated on March 30, 1984. The regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to its agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Those parties now known to be related to the respondent, and which are accordingly subject to the provisions of this order, are:

Claude Seront, Managing Director,  
Noron S.A., 40 Avenue de Broqueville,  
1200 Brussels, Belgium,  
Herman Noe, Director, Noron S.A., 40  
Avenue de Broqueville, 1200 Brussels,  
Belgium  
and

FMC Taco Impex S.A., Via Lect. Olgiati  
2.3, Quartiere Sagittario, CH 6512  
Guibiasco, Switzerland.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondents or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, the respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner,

International Trade Administration, U.S. Department of Commerce, Room 6716, 14th and Constitution Avenue NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondent as a result of the ongoing investigation. A copy of this order and of Parts 387 and 388 of the Regulations shall be served upon the respondent and each above-named related party.

Dated: May 17, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-12539 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DT-M

#### Short Supply Determination on Hot-Dipped Tin Steel Sheet; Request for Comments

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to hot-dipped tin steel sheet.

**EFFECTIVE DATE:** Comments must be submitted no later than June 3, 1985.

**ADDRESS:** Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3099.

**FOR FURTHER INFORMATION CONTACT:** Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides "If the U.S. . . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation,

extended delivery periods or other relevant factors) an additional tonnage shall be allowed for such product . . . ."

We have received a short request for the following product: Hot-dipped tin steel sheet, with dimensions of 2000 mm x 1000 mm in length and width, 0.5 mm to 2.0 mm in thickness, and with a coating range from 100 to 245 grams per square meter.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 20, 1985.

[FR Doc. 85-12596 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DS-M

#### Short Supply Determinations on Steel Pipe and Tube; Request for Comments

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to cold-drawn seamless steel tubes with outside diameters ranging from 4 mm to 50 mm and wall thicknesses ranging from 0.5 mm to 8 mm.

**EFFECTIVE DATE:** Comments must be submitted no later than June 3, 1985.

**ADDRESS:** Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3099.

**FOR FURTHER INFORMATION CONTACT:** Nicholas C. Tolerico, Office of Agreements Compliance, Import

Administration, 14th and Constitution Avenue NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

**SUPPLEMENTARY INFORMATION:** On January 10, 1985, the United States (U.S.) and the European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that " \* \* the U.S. shall accept exports of pipes and tubes in addition to those permitted under section 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8, the Department " \* \* shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for acceptance under short supply provisions for the following product:

1. Cold drawn seamless steel tube conforming either to DIN specification 2391 or to ASTM specification A519 in the following metric sizes:

- A. 4 mm x 0.5 and 1.0 mm
- B. 5 mm x 1.0 mm
- C. 6 mm x 1.0, 1.5, and 2.0 mm
- D. 8 mm x 1.0, 1.5, 2.0, and 2.5 mm
- E. 10 mm x 1.0, 1.5, 2.0, and 2.5 mm
- F. 12 mm x 1.0, 1.5, 2.0, 2.5, and 3.0 mm
- G. 14 mm x 1.0, 1.5, 2.0, 2.5, and 3.0 mm
- H. 15 mm x 1.0, 1.5, 2.0, 2.5, and 3.0 mm
- I. 16 mm x 1.0, 1.5, 2.0, 2.5, and 3.0 mm
- J. 18 mm x 1.0, 1.5, 2.0, 2.5, and 3.0 mm
- K. 20 mm x 1.5, 2.0, 2.5, 3.0, 3.5, and 4.0 mm
- L. 22 mm x 1.5, 2.0, 2.5, and 3.0 mm
- M. 25 mm x 2.0, 2.5, 3.0, 4.0, 4.5, and 5.0 mm
- N. 28 mm x 1.5, 2.0, 3.0, and 4.0 mm
- O. 30 mm x 2.0, 2.5, 3.0, 4.0, and 5.0 mm
- P. 35 mm x 2.0, 3.0, 4.0, and 5.0 mm
- Q. 38 mm x 2.5, 3.0, 4.0, and 5.0 mm
- R. 42 mm x 2.0, 4.0, and 5.0 mm
- S. 50 mm x 6.0 mm.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than 10 days after the publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of their submission and also include with it a submission without proprietary information, which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department

of Commerce, Room B-099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 20, 1985.

[FR Doc. 85-12597 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-09-M

## Minority Business Development Agency

### Applications; Minority Business Development Center Program

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at \$451,000 for the project performance period of October 1, 1985 to September 30, 1986. The MBDC will operate in the Phoenix Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of \$383,350 in Federal funds and a minimum of \$67,650 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I. D. Number for this project will be 09-10-85030-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to

the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 15018, San Francisco, California 94102; June 5, 1985 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102, 415/558-6734.

Closing date: The closing date for applications is June 24, 1985. Applications must be postmarked on or before 5:00 pm—June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance) May 20, 1985.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 85-12521 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-21-M

### Applications; Minority Business Development Center Program

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to

operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at \$451,000 for the project performance period of October 1, 1985 to September 30, 1986. The MBDC will operate in the San Jose Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of \$383,350 in Federal funds and a minimum of \$67,650 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-86001-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 15018, San

Francisco, California 94102; June 5, 1985 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102, 415/556-6734

Closing date: The closing date for applications is June 24, 1985. Applications must be postmarked on or before 5:00 p.m.—June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance) Xavier Mena,

Regional Director, San Francisco Regional Office.

May 20, 1985.

[FR Doc. 85-12522 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### National Advisory Committee on Oceans and Atmosphere; Meeting

#### Correction

In FR Doc. 85-12066 appearing on page 20823 in the issue of Monday May 20, 1985, make the following correction:

In the third column, last paragraph, last two lines, the telephone number should have read "202/653-7818".

BILLING CODE 1505-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products or Manufactured in Mexico, Effective January 1, 1985; Correction

May 22, 1985.

On December 27, 1984 a notice was published in the Federal Register (49 FR 50230) announcing restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during 1985. The limit for man-made fiber yarn in Category 604 in the letter to the Commissioner of Customs of December 21, 1984 which followed that

notice should have included a sublimit as follows:

Category	12-mo restraint limit
604	2,500,000 pounds of which not more than 750,000 pounds shall be in category 604pt. (only TSUSA 310.5049).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 12587 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DR-M

## Temporary Visa Waiver for Certain Man-Made Fiber Sweater Jackets

May 21, 1985.

On April 10, 1985, the U.S. Customs Service issued a ruling on 100 percent acrylic heavy gauge knit sweater jackets with knit pile sherpa-style linings. These sweater jackets previously had been classified by most Customs ports as sweaters in Category 646. Under the new ruling the classification of these products was changed to Category 635, women's, girls' and infants' man-made fiber coats and jackets.

In order to eliminate trade problems resulting from this new ruling, a decision has been reached to permit importers having acrylic knit sweater jackets with sherpa style linings which are visaed as sweaters in Category 646, which are entered or withdrawn from warehouse for consumption in the United States by September 15, 1985, regardless of the date of export, but within the limits of existing quotas, to obtain waivers of the requirement for a Category 635 visa by addressing a request to: Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, Washington, D.C. 20230, Attention: Waivers.

The following information should be included:

Port of Entry (indicating whether airport or seaport)

Name and Address of Importer  
Name and Telephone Number of Customs Broker

Description of Merchandise  
Category and TSUSA Number  
Quantity (units as set out in the TSUSA)  
Entry Number of Bill of Lading Number  
Country of Origin  
Date of Export  
Exporter

Information included in any request for a waiver is subject to section 1001 of Title 181 of the U.S. Code, which provides penalties for making false

statements to any department of the United States Government.

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85-12625 Filed 5-23-85; 8:45 am]

BILLING CODE 3510-DR-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1985 Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1985 commodities and services to be provided by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** May 24, 1985.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557-1145

**SUPPLEMENTARY INFORMATION:** On December 7, 1984 and January 18, March 1, and March 29, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 47890, 50 FR 2704, 50 FR 8357 and 50 FR 12605) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

### Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1985:

### Class 2540

Kit, Deep Water Fording: 2540-00-181-8109

### Class 6532

Slippers, Convalescent Patient: 6532-00-079-7889 (Small), 6532-01-011-5055 (Toddler), 6532-01-011-5056 (Child), 6532-01-011-5057 (Youth)

### Class 7530

Paper, Looseleaf, Blank: 7530-00-286-6983, 7530-00-286-6984

### SIC 0782

Grounds Maintenance and Sprinkler System Maintenance

Buildings 1609, 2860, 8350, 8351, 8352, 8353, 8354, and 8356

Edwards Air Force Base, California

### SIC 7349

Cardboard and Paper Scrap Recovery, Department of Energy, BPA, Portland, Oregon.

C.W. Fletcher,

*Executive Director.*

[FR Doc. 85-12606 Filed 5-23-85; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List 1985 Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1985 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: June 26, 1985.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1985, October 19, 1984 (49 FR 41195):

### Class 6530

Pad, Bed Linen, Protective: 6530-01-088-6506

### SIC 7369

Commissary Shelf Stocking and Custodial, Fort Sheridan, Illinois.

C. W. Fletcher,

*Executive Director.*

[FR Doc. 85-12605 Filed 5-23-85; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

May 17, 1985.

The USAF Scientific Advisory Board's Logistics Cross-Matrix will meet at the Pentagon, Washington, DC on June 17, 1985.

The purpose of the meetings will be to discuss the logistics supply area to include spare parts, reliability and maintainability issues, and mantech. The meeting will convene from 8:30 a.m. to 5:00 p.m.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 85-12617 Filed 5-23-85; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday-Wednesday, 10-12 June 1985.

Times of Meeting: 0830-1700 hours all three days (Closed).

Places: Combined Arms Center, Ft. Leavenworth, Kansas on 10&11 June; Naval Personnel Research and Development Center, San Diego, California, 12 June.

Agenda: The Active and Reserve Forces Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet

at the Combined Arms Center to more closely examine combat force initiatives that are driving logistics manpower requirements. In addition, the subpanel will be briefed at the Naval Personnel R&D Center on Navy studies aimed at reducing logistical personnel. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer Army Science Board.*

[FR Doc. 85-12571 Filed 5-23-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Wednesday & Thursday, 12 & 13 June 1985

Times of Meeting: 0800-1700 hours (Closed) on both days

Places: 49th Armored Division, Texas Army National Guard, Fort Hood, Texas

Agenda: The Army National Guard Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet to observe and discuss the logistical functions at each level: company, battalion, brigade, division, and corps to (1) establish the baseline manpower requirements for the total logistic system supporting AirLand Battle and (2) to identify feasible strategies for more efficient utilization of manpower. The subpanel members will receive orientation briefing and visit units to observe and discuss training programs and effectiveness issues as they relate to manpower for logistic support. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASAB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 85-12572 Filed 5-23-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Thursday, 13 June 1985.

Time of Meeting: 0830-1700 hours (Closed).

Place: The BDM Corporation, McLean, Virginia.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory (EWL) Effectiveness Review will meet for a draft report writing session. The study purpose is to provide an independent evaluation of EWL to ensure its continued excellence. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 85-12573 Filed 5-23-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday, 20 June 1985.

Times of Meeting: 0830-1700 hours

(Closed).

Places: The BDM Corporation, McLean, Virginia.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory (EWL) Effectiveness Review will meet to finalize the study report. The study purpose is to provide an independent evaluation of EWL to ensure its continued excellence. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 85-12574 Filed 5-23-85; 8:45 am]

**BILLING CODE 3710-08-M**

### Army Science Board; Meeting Cancellation

The following meeting of the Army Science Board Ad Hoc Subgroup on U.S. Army Atmospheric Sciences Laboratory

(ASL) Effectiveness Review which was originally announced in the *Federal Register* issue of Friday, May 10, 1985 (50 FR 19778), FR Doc. #85-11358, has been cancelled:

Dates of Meeting: Thursday & Friday, June 6 and 7, 1985.

Place: Johns Hopkins University Applied Physics Laboratory, Laurel, Maryland.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 85-12570 Filed 5-21-85; 12:51 pm]

**BILLING CODE 3710-08-M**

### Department of the Navy

#### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Joint C<sup>3</sup> Interoperability Panel of the Naval Research Advisory Committee will meet on June 11-12, 1985, at TRW, 7600 Colshire Drive, McLean, Virginia. The agenda will include technical briefings from the individual military services and their sponsors on their respective command and control systems, requirements and infrastructure capability. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on June 11 and 12, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the quality of joint command and control systems, and assess future requirement and infrastructure capability. The agenda will include discussions with officials from the Department of the Army, the Office of the Secretary of Defense, the Defense Communications Agency and the National Security Agency regarding C<sup>3</sup> Interoperability. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval

Research (Code 100N) 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 21, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,  
Federal Register Liaison Officer.

[FR Doc. 85-12599 Filed 5-23-85; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Meeting on Educational Research Priorities

**AGENCY:** Office of the Secretary, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Secretary of Education will conduct a meeting on educational research priorities. This notice announces the date, time, and place for the meeting. It also notifies the general public of their opportunity to attend.

**DATE:** June 6, 1985 at 9:30 a.m.

**ADDRESS:** Room 3000, 400 Maryland Avenue, SW., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Thomas R. Ascik, NIE Senior Associate, National Institute of Education, 1200 19th Street, NW., Washington, D.C. 20208. Telephone: (202) 254-6070.

**SUPPLEMENTARY INFORMATION:** The Secretary of Education has invited a small number of distinguished scholars to meet informally for the purpose of exchanging information and views on current and future educational research priorities of the Department of Education. The first meeting of the scholars with the Secretary was held on April 17, 1985, and included a discussion of, among other issues, the "mission statements" for educational research and development centers. This second and final meeting of these scholars with the Secretary will include a discussion of the following questions:

—In what areas does the application of knowledge and insight that research can reasonably be expected to produce hold greatest promise for improving the quality of American education?

—How satisfactorily do the research activities currently underway at the Department of Education, and those planned for the future, match the priorities suggested by the answer to the prior question?

This meeting is open to the public. Written comments are invited and may be mailed to Thomas Ascik at his address provided above or hand delivered to Mr. Ascik at the meeting.

Dated: May 21, 1985.

William J. Bennett,  
Secretary of Education.

[FR Doc. 85-12533 Filed 5-23-85; 8:45 am]

BILLING CODE 4090-01-M

## DEPARTMENT OF ENERGY

### Program Research and Development Announcement; Documentation on Currently Operating Low-Level Radioactive Waste Treatment Systems

**AGENCY:** Department of Energy.

**ACTION:** Program Research and Development Announcement (PRDA) No. DE-PRO7-85ID12568 for Documentation on Currently Operating Low-Level Radioactive Waste Treatment Systems.

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office, desires to receive and consider for support, proposals for documenting the performance of in-use low-level radioactive waste treatment systems to aid potential users of such treatment systems in selection of an appropriate system. The total amount of DOE funding allotted for this program is \$150,000. It is anticipated that six to twelve awards will be made, depending on the amount of each award. The expected relationship will be one of financial assistance, although some awards may be contracts.

#### Minimum Requirements

Responses shall demonstrate that: (1) The waste treatment system is a non-incineration system used for low-level radioactive waste treatment; (2) existing operational data is available to adequately document the amount and type of low-level radioactive waste handled by the system, the feed rate of the system, installation and operational costs, physical form and radioactivity of the final product(s), off-gas system (if any), and worker exposure; and (3) the treatment system processes a waste type generated by many radioactive material users.

**DATES:** The PRDA will be issued during June, 1985, with proposals due approximately 45 days thereafter.

**Contacts:** Potential proposers desiring to receive a copy of the PRDA should provide a written request to the following address: Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401. Attn: Elaine M. Richardson, Contracts Management Division.

Issued at Idaho Falls, Idaho, on May 14, 1985.

J.F. Marino,

Director Contracts Management Division.

[FR Doc. 85-12585 Filed 5-23-85; 8:45 am]

BILLING CODE 6450-01-M

## Office of Conservation and Renewable Energy

[Case No. DW-003]

### Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Dishwasher Test Procedures to ANDI-CO Appliances, Inc.

**AGENCY:** Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order [Case No. DW-003] granting ANDI-CO Appliances, Inc., as agent for a foreign manufacturer of dishwashers, AEG Household Appliances, a waiver for the Favorit Models 263 and 265 dishwashers manufactured by AEG Household Appliances from the existing DOE dishwasher test procedures. ANDI-CO plans to import the Favorit Models 263 and 265 dishwashers into the United States.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112.1, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9513.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, ANDI-CO Appliances, Inc., as agent for a foreign manufacturer of dishwashers, AEG Household Appliances, is granted a waiver for the Favorit Models 263 and 265 dishwashers manufactured by AEG Household Appliances, permitting the company to use an alternative test method.

Issued in Washington, D.C., May 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy, Assistant Secretary for Conservation and Renewable Energy

[Case No. DW-003]

In the matter of: ANDI-CO Appliances, Inc.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including dishwashers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108, Sept. 26, 1980.

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the Federal Register notice of each waiver granted, and any limiting conditions of each waiver.

ANDI-CO Appliances, Inc. (ANDI-CO) filed a Petition for Waiver in accordance with § 430.27 on August 12, 1984. DOE published in the Federal Register the ANDI-CO petition and solicited comments, data and information respecting the petition. 49 FR 39206, October 4, 1984. Comments were received by two manufacturers of dishwashers, the General Electric Company (GE) and Design and Manufacturing Corporation (D&M). DOE consulted with the Federal Trade Commission (FTC) on March 28, 1985, concerning the ANDI-CO petition.

ANDI-CO also filed an Application for Temporary Exception with the DOE Office of Hearings and Appeals (OHA) on September 17, 1984, for the Favorit Models 263 and 265 dishwashers (Case No. HEL-0103). OHA issued a proposed Decision and Order and a final Decision and Order on December 18, 1984, and January 10, 1985, respectively. The temporary relief granted in OHA's final Decision and Order applies only to 100 units of the Favorit Models 263 and 265 dishwashers which ANDI-CO plans to import into the U.S. for the purposes of test-marketing and remains in effect pending further Order of OHA, but in any case expires 120 days after issuance (May 10, 1985). Today's Decision and Order has no effect on the final Decision and Order issued by OHA.

In OHA's final Decision and Order to ANDI-CO, OHA specified that ANDI-CO must maintain the electrical supply to the dishwasher within two percent of 230 volts and within one percent of its nameplate frequency; maintain the water supply temperature between 48° F and 52° F and heat the water to a temperature above 120° F in at least one wash phase of the normal cycle; test the dishwasher on the normal cycle and the truncated normal cycle with a test load as specified in Appendix C, Section 2.6.2; measure the machine electrical energy consumption, M, using a water supply temperature as set forth above and using a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt-hour and a maximum error no greater than one percent; and set the dishwasher's per-cycle energy consumption, E, equal to the value of M described above.

#### Assertions and Determinations

ANDI-CO's petition seeks a waiver from the DOE dishwasher test procedures regarding the Favorit Models 263 and 265 dishwashers which utilize an electrical supply voltage of 240 volts and, in their normal mode, use cold water input only and heat it to a designated program-selected temperature. ANDI-CO's petition contends that while the Favorit Models 263 and 265 dishwashers are covered products under the Act, these dishwashers incorporate features which are not addressed in the existing test procedures and, consequently, cannot be adequately tested under the existing DOE test procedures for dishwashers.

ANDI-CO's petition alleges that the DOE test procedures give materially inaccurate estimates of the energy consumed by its Favorit Models 263 and 265 dishwashers. ANDI-CO states that the DOE test procedures for dishwashers do not provide for testing units designed to operate with an electrical supply voltage of 240 volts. The test procedure only provides for testing dishwashers designed to operate with an electrical supply voltage of 115 volts. Furthermore, ANDI-CO states that the DOE test procedure requirement for measurement of energy consumption based upon an inlet water temperature to the dishwasher from the water heater of either 140° F or 120° F and a nominal water heater temperature rise of 90° F or 70° F, respectively, yields an inaccurate estimate of the annual operating cost of dishwashers designed to operate with cold inlet water.

GE commented that ANDI-CO, in its petition, failed to include any alternate test procedure as required by § 430.27(b). GE further commented that ANDI-CO claims the dishwashers can be classified as water heating dishwashers and can use hot water input even though, in the normal mode, the dishwashers use cold water input only. GE commented that if this is so, ANDI-CO must specify the conditions for the "normal" cycle.

D&M commented that if the dishwasher is to be tested with cold water, the inlet water temperature limits should be specified. Since the dishwasher apparently heats its own water during the cycle, the inlet water temperature would affect the energy required by the dishwasher to heat the incoming

water, which would affect the energy cost information in the Energy Guide label.

D&M also commented that if the dishwasher is tested with cold water and the results used for labeling purposes, the labeling information should be identified as being obtained with cold water. D&M stated that consumers might purchase the dishwasher on the basis of a low cost of operation, as noted on the label, and not realize the dishwasher would have to be operated with cold water to achieve the low cost.

In response to the GE comment regarding an incomplete waiver due to the failure to include any alternative test procedure, ANDI-CO submitted a test procedure entitled, "Methods to be Used for Measuring Energy Consumption of Electric Automatic Dishwashers for Cold Water Supply Only, for Household Use and for the Purpose of Informing Consumers of It," published by the European Committee for Electrotechnical Standardization.

GE and D&M both commented that the conditions for "normal" cycle should be specified. In today's Decision and Order, Section (3)(b) specifies that the water supply temperature shall be maintained between 48° F and 52° F and the water shall be heated to above 120° F in at least one wash phase of the normal cycle. The Favorit Models 263 and 265 dishwashers are to be tested with inlet water at a nominal temperature of 50° F. This specification was made in order to be consistent with the DOE test procedures for dishwashers in which the dishwashers use hot water from a water heater with inlet water at a nominal temperature of 50° F. DOE believes that this specification resolves the concerns expressed by both GE and D&M.

In the final rule for water heating dishwashers, DOE stated that a requirement that the dishwasher, itself, heat water to a specified minimum temperature is overly restrictive and could exclude certain designs. 49 FR 46533, November 27, 1984. The requirement in today's Decision and Order which specifies the dishwasher heating the water to above 120° F in at least one wash phase of the normal cycle is a departure from previous rulemakings. This requirement is consistent with ANDI-CO's request in its Petition for Waiver and also with OHA's Decision and Order. For the Favorit Models 263 and 265 dishwashers, DOE concludes that specifying heating the water to above 120° F is not overly restrictive for ANDI-CO's Favorit Models 263 and 265 dishwashers. The matter of whether the 120° F temperature specification is overly restrictive for all dishwashers which use 50° F inlet water (cold water) will be considered more fully in the future dishwasher test procedure rulemaking to eliminate the need for this test procedure waiver.

Regarding D&M's concern that consumers be informed about the inlet water temperature, Section (3)(f) of today's Decision and Order specifies that ANDI-CO shall disclose, in making any representations, that the energy consumption used to calculate the cost of operation is based upon cold inlet water (water at 50° F). This condition of the waiver was determined both to be the safest

approach for avoiding any possible consumer confusion in this regard and to be acceptable due to the limited amount of testing foreseeable under the waiver. Any need for such information in other contexts, such as on appliance labels, is more appropriately an issue for the FTC. The Energy Guide labeling program is established by FTC regulation, set forth in 16 CFR Part 305.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by ANDI-CO Appliances, Inc. (DW-003), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of 10 CFR Part 430, ANDI-CO shall be permitted to test the Favorit Models 263 and 265 dishwashers manufactured by AEG Household Appliances on the basis of the test procedure specified in 10 CFR Part 430, Subpart B, Appendix C, with the modifications set forth in paragraph (3) below.

(3) Notwithstanding any contrary provisions of 10 CFR Part 430, Subpart B, ANDI-CO, in tests of the Favorit Models 263 and 265 dishwashers, shall:

(a) Maintain the electrical supply to the dishwasher within two percent of its nameplate voltage and within one percent of its nameplate frequency as specified by the manufacturer;

(b) Maintain the inlet water supply temperature between 48 °F and 52 °F, and heat the water to a temperature above 120 °F in at least one wash phase of the normal cycle, as defined in Appendix C, Section 1.3;

(c) Test the dishwasher on the normal cycle and the truncated normal cycle with a test load as specified in Appendix C, Section 2.6.2;

(d) Measure the machine electrical energy consumption, M, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in subparagraph (b) above. A kilowatt-hour meter having a resolution no larger than 0.001 kilowatt hours and a maximum error no greater than one percent shall be used;

(e) Set the dishwasher's per-cycle energy consumption, E, expressed in kilowatt-hours per cycle, equal to the value of M described in subparagraph (d) above; and

(f) Shall disclose in making representations that the energy consumption used to calculate the cost of operation is based upon 50 °F inlet water which is heated to a temperature above 120 °F in at least one wash phase of the normal cycle.

(4) With the exception of the modifications set forth above, ANDI-CO shall comply in all respects with the provisions specified in Appendix C of 10 CFR Part 430, Subpart B.

(5) The waiver shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to the Favorit Models 263 and 265 dishwashers manufactured by AEG Household Appliances.

(6) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination

that the factual basis underlying the application is incorrect.

Issued in Washington, D.C., May 8, 1985.  
Donna R. Fitzpatrick,  
Acting Assistant Secretary, Conservation and Renewable Energy.  
[FR Doc. 85-12584 Filed 5-23-85; 8:45 am]  
BILLING CODE 6450-01-M

## Economic Regulatory Administration [Docket PP-63]

### Issuance of an Order Amending the Presidential Permit in Docket PP-63 to Northern States Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of an Order amending the Presidential permit in Docket PP-63 authorizing Northern States Power Company (NSP) to construct, connect, operate, and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: The Economic Regulatory Administration (ERA) gives notice of the issuance of an order amending the Presidential permit issued in ERA Docket PP-63 authorizing NSP to construct, connect, operate, and maintain electric transmission facilities at the international border between the United States and Canada. This Order authorizes the operation of the electric transmission facilities under the terms of a new Power Agreement.

#### FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-5935

Lise Curtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: On January 31, 1985, NSP filed an application with ERA for an amendment to the Presidential permit issued in Docket PP-63, pursuant to Executive Order 10485, as amended by Executive Order 12038. The Presidential permit in Docket PP-63 was issued by ERA on March 6, 1979, and authorized NSP to construct, connect, operate and maintain a 500,000 volt electric transmission line at the international border between the United States and Canada.

NSP presently operates the subject transmission facilities under the terms and conditions of the Transactions and Coordinating Agreement which was

signed by NSP and Manitoba Hydro on July 21, 1976. This agreement provided for a 300 megawatt seasonal diversity exchange, and the purchase by NSP of 200 megawatts of summer peaking capacity. This agreement expires on April 30, 1993.

On July 14, 1984, NSP signed a new Power Agreement with the Manitoba Hydro Electric Board and the Manitoba Energy Authority. This agreement eliminates the 300 megawatt seasonal diversity exchange and replaces the 200 megawatt summer capacity purchase with a 500 megawatt firm capacity purchase by NSP on a year-round basis beginning on May 1, 1993.

NSP has required that the Presidential permit issued in Docket PP-63 be amended to allow the operation of the 500,000 volt transmission line under the terms and conditions of the new Power Agreement.

Since no physical changes to the facilities are involved, the Department of Energy determined that the granting of the proposed amendment would not result in significant effects on the quality of the human environment and that no new environmental impact statement or environmental assessment was required.

ERA determined that changes in the operation of the facilities would not adversely impact the reliability of the electric bulk power supply system. Both the Departments of State and Defense concurred in the issuance of the amendment to the permit.

A copy of the Order amending the permit is available for public inspection and copying at the DOE Freedom of Information Library, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 8, 1985.  
Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-12583 Filed 5-23-85; 8:45 am]  
BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. ER85-375-000]

Centel Corporation-Kansas; Order Denying Motions To Reject, Accepting for Filing and Suspending Rates, and Establishing Hearing and Price Squeeze Procedures

Issued: May 17, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On March 18, 1985, Centel Corporation-Kansas (Centel) submitted for filing a proposed increase in rates for full requirements service to municipal customers, for off-peak partial requirements service to municipal customers, and for transmission service to Kansas Electric Power Cooperative, Inc. (KEPCO).<sup>1</sup> Centel also proposes to decrease its rates for partial requirements service to cooperatives and municipals. Overall, the proposed rates would increase revenues by \$743,000 (4%) during the twelve month test period ending June 30, 1986. Centel has also expanded its transmission service to KEPCO to provide for the transmission of power and energy from KEPCO's share of the Wolf Creek Nuclear Generation Station and has expanded service under its off-peak rates to include off-peak hours during all months of the year. Lastly, Centel has revised the terms of its transmission tariff to permit the utility, at its discretion, to limit the transmission of supplemental and excess energy associated with KEPCO's Southwestern Power Administration (SWPA) deliveries if the deliveries pose operating problems or cause undue expense to Centel's customers. Centel requests that its proposed filing become effective on May 18, 1985.

Notice of the filing was published in the *Federal Register*,<sup>2</sup> with comments, protests, or interventions due, after extension, on or before April 17, 1985.

On April 15, 1985, The City of Glen Elder, Kansas, a full requirements customer of Centel, filed a protest which states that the increased rates are a burden to its customers, but which raises no cost of service issues.

On April 15, 1985, KEPCO, on behalf of itself and its member cooperatives, filed a motion to intervene. KEPCO requests that Centel's filing be declared deficient for lack of adequate workpapers. KEPCO also requests that the Commission suspend Centel's filing for the maximum statutory period. In support, KEPCO raises various cost of service issues, including: (1) An excessive return on common equity; (2) understatement of retail class demands; (3) an excessive increase in plant investment, in depreciation expense, and in transmission and distribution O&M expenses for Period II; (4) the inclusion of a reserve for future maintenance expense; (5) unsupported amounts for alleged unfunded liabilities for deferred income taxes; (6) an

understatement of revenue credits for off-system sales; (7) an improper allocation of regulatory commission expense on the basis of O&M expenses; (8) unsupported assignments to wholesale customers of distribution facilities; and (9) inclusion of payments made under take or pay fuel contracts. KEPCO also requests rejection of revised terms and conditions for transmission service which allow the company to limit the delivery of KEPCO's supplemental and excess energy purchased from SWPA if such deliveries would pose operational problems or if such deliveries would cause an undue expense to Centel's customers. Lastly, KEPCO requests the initiation of price squeeze procedures.

On April 17, 1985, the Kansas Municipal Group (Municipals)<sup>3</sup> filed a protest and motion to intervene. The Municipals request that the Commission reject Centel's filing or, in the alternative, suspend it for the maximum statutory period. The Municipals raise substantially the same cost of service allegations as those raised by KEPCO, as well as price squeeze claims.

On April 30, 1985, Centel filed an answer to the motions of KEPCO and the Municipals. While Centel does not object to the intervention of KEPCO and the Municipals, it opposes the motion to declare its filing deficient and the requests for a five month suspension. The utility alleges that no more than a one day suspension is warranted; in support, Centel denies the specific allegations made by the intervenors.

#### Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rule of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make KEPCO, its member cooperatives, and the Municipals parties to this proceeding.

We find that Centel's filing minimally complies with the filing requirements set forth in Part 35 of the Commission's regulations but is not patently deficient. We shall therefore deny the motions to reject Centel's filing or declare it deficient.

With respect to the provision in Centel's transmission tariff which limits service in the event of operational or economic problems, we do not find this provision to be unreasonable on its face. We shall therefore deny KEPCO's motion to summarily reject this

provision. However, we agree with KEPCO that the provision is vague and inadequately supported in the company's filing. Accordingly, we shall suspend the effectiveness of the provision for five months and set it for hearing.

Our review of the instant filing and pleadings indicates that the rates proposed by Centel have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Centel's proposed rates for filing and suspend the rate increases as ordered below.

In *West Texas Utilities Company*, 18 FREC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would generally impose a nominal suspension. Our review in this docket indicates that the proposed rates for full requirements service, off-peak partial requirements service, and for transmission service may not yield substantially excessive revenues. Accordingly, we shall suspend these rates for one day to become effective, subject to refund, on May 19, 1985. Inasmuch as Centel's proposed rates for partial requirements service represent a reduction from the current rate level, we shall permit those rates to take effect, without suspension, on May 18, 1985, as requested. In the event that the investigation in this docket reveals that the partial requirements rates are unreasonable, any change in those particular rates shall become effective prospectively from the date of a final Commission order.

In light of the price squeeze allegations raised by the Municipals and KEPCO we shall institute price squeeze procedures in accordance with the Commission policy and practice established in *Arkansas Power and Light Company*, 8 FREC ¶ 61,131 (1979).

The Commission orders:

(A) The motions to reject and declare Centel's filing deficient are hereby denied.

(B) KEPCO's motion to reject the changes in Centel's transmission rate schedule submittal is hereby denied.

(C) The provision in Centel's transmission rate schedule submittal granting the company discretion to limit delivery of SWPA power is hereby accepted for filing, and suspended for five months to become effective, subject to refund, on October 18, 1985.

(D) Centel's proposed rates for full requirements and off-peak partial requirements service to the Municipals and transmission service to KEPCO are

<sup>1</sup> See Attachment for rate schedule designations.

<sup>2</sup> 50 FR 13412 (1985).

<sup>3</sup> The group is composed of the following all-requirements municipal wholesale customers: Cawker City, Cimarron, Coats, Glasgow, Glen Elder, Holyrood, Isabel, Lucas, Luray, Mankato, and Montezuma, Kansas; and the following interconnected municipal utilities: Anthony, Attica, Beloit, Hoisington, Kingman, Pratt, Russell, and Washington, Kansas.

suspended for one day to become effective, subject to refund, on May 19, 1985; the proposed decrease in partial requirements rates shall become effective on May 18, 1985.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Centel's rates and the proposed transmission rate schedule changes.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures being after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,  
Secretary.

## CENTEL—RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-375-000]

Other party	Designation	Supersedes supplement No.
<b>I. Municipal Wholesale Customers Rate 85-MWh-5</b>		
1. Cawker City	Supplement No. 12 to Rate Schedule FERC No. 87.	Supplement No. 11.
2. Cimarron	Supplement No. 5 to Rate Schedule FERC No. 109.	Supplement No. 4.
3. Coats	Supplement No. 12 to Rate Schedule FERC No. 88.	Supplement No. 11.
4. Glasco	Supplement No. 12 to Rate Schedule FERC No. 97.	Do.
5. Glen Elder	Supplement No. 12 to Rate Schedule FERC No. 89.	Do.
6. Holyrood	Supplement No. 12 to Rate Schedule FERC No. 90.	Do.
7. Isabel	Supplement No. 12 to Rate Schedule FERC No. 91.	Do.
8. Lucas	Supplement No. 12 to Rate Schedule FERC No. 93.	Do.
9. Luray	Supplement No. 5 to Rate Schedule FERC No. 111.	Supplement No. 4.
10. Mankato	Supplement No. 12 to Rate Schedule FERC No. 95.	Supplement No. 11.
11. Montezuma	Supplement No. 5 to Rate Schedule FERC No. 110.	Supplement No. 4.

**II. Interconnected Municipal Wholesale Rate 85-A-1**

1. Anthony	Supplement No. 25 to Rate Schedule FERC No. 59.	Supplement No. 24.
2. Attica	Supplement No. 22 to Rate Schedule FPC No. 84.	Supplement No. 21.
3. Beloit	Supplement No. 23 to Rate Schedule FPC No. 60.	Supplement No. 22.
4. Hoisington	Supplement No. 25 to Rate Schedule FPC No. 57.	Supplement No. 24.
5. Kingman	Supplement No. 27 to Rate Schedule FPC No. 58.	Supplement No. 26.
6. Pratt	Supplement No. 25 to Rate Schedule FPC No. 34.	Supplement No. 25.
7. Russell	Supplement No. 25 to Rate Schedule FPC No. 41.	Supplement No. 24.
8. Washington	Supplement No. 25 to Rate Schedule FPC No. 56.	Do.
9. Osborne	Supplement No. 18 to Rate Schedule FPC No. 86.	Supplement No. 17.
10. Stockton	Supplement No. 16 to Rate Schedule FERC No. 99.	Supplement No. 15.

**III. Rural Electric Cooperatives Rate 85-CWh-2**

1. Ark Valley	Supplement No. 18 to Rate Schedule FPC No. 74.	Supplement No. 17.
2. C.M.S.	Supplement No. 22 to Rate Schedule FPC No. 75.	Supplement No. 21.
3. C&W	Supplement No. 18 to Rate Schedule FPC No. 76.	Supplement No. 17.
4. Jewell-Mitchell	Supplement No. 19 to Rate Schedule FPC No. 77.	Supplement No. 18.

## CENTEL—RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. ER85-375-000]

Other party	Designation	Supersedes supplement No.
5. N.C.K.	Supplement No. 19 to Rate Schedule FPC No. 78.	Do.
6. Ninnescah	Supplement No. 18 to Rate Schedule FPC No. 79.	Supplement No. 17.
7. Norton-Decatur	Supplement No. 17 to Rate Schedule FPC No. 80.	Supplement No. 16.
8. Smoky Hill	Supplement No. 18 to Rate Schedule FPC No. 81.	Supplement No. 17.
9. Sumner-Cowley	Supplement No. 18 to Rate Schedule FPC No. 82.	Do.
10. Victory	Supplement No. 19 to Rate Schedule FPC No. 83.	Supplement No. 18.

**IV. Off-Peak Service Rate 85-D**

1. Anthony	Supplement No. 26 to Rate Schedule FPC No. 59.	Supplement No. 25.
2. Attica	Supplement No. 23 to Rate Schedule FPC No. 84.	Supplement No. 22.
3. Beloit	Supplement No. 24 to Rate Schedule FPC No. 60.	Supplement No. 23.
4. Hoisington	Supplement No. 26 to Rate Schedule FPC No. 57.	Supplement No. 25.
5. Kingman	Supplement No. 28 to Rate Schedule FPC No. 58.	Supplement No. 27.
6. Pratt	Supplement No. 27 to Rate Schedule FPC No. 34.	Supplement No. 26.
7. Russell	Supplement No. 26 to Rate Schedule FPC No. 41.	Supplement No. 25.
8. Washington	Supplement No. 26 to Rate Schedule FPC No. 56.	Do.
9. Osborne	Supplement No. 19 to Rate Schedule FPC No. 86.	Supplement No. 18.
10. Stockton	Supplement No. 17 to Rate Schedule FPC No. 99.	Supplement No. 16.

**V. Rate Schedules 85-TSV-1 and 85-TSV-2**

1. Kansas Electric Power Cooperative.	Rate Schedule FPC No. 114 (Supersedes Rate Schedule FPC No. 113, as supplemented). Supplement No. 1 to Rate Schedule FPC No. 114. Supplement No. 2 to Rate Schedule FPC No. 114. Supplement No. 3 to Rate Schedule FPC No. 114. Rate Schedule FPC No. 115.	Transmission Service Tariff (85-TSV-1). Appendix A. Appendix B. Appendix C.
2. Kansas Electric Power Cooperative.	Supplement No. 1 to Rate Schedule FPC No. 115. Supplement No. 2 to Rate Schedule FPC No. 115. Supplement No. 3 to Rate Schedule FPC No. 115.	Transmission Service Tariff (85-TSV-2). Appendix A. Appendix B. Appendix C.

[FR Doc. 85-12633 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-380-000, and ER77-175-004 (Remand), ER78-19-000 (Phase II), et al., and ER81-588-000]

**Florida Power & Light Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motion To Reject, Granting Requests for Summary Disposition in Part, and Establishing Hearing and Price Squeeze Procedures**

Issued: May 17, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On March 20, 1985, Florida Power & Light Company (FP&L) tendered for filing a proposed two-step increase in its rates for transmission service to four customers<sup>1</sup> under long-term firm service contracts.<sup>2</sup> The proposed Phase I rates would increase revenues by approximately \$4 million (25%), based on the calendar year 1985 test period. The Phase II rates would result in an additional increase of approximately \$4.1 million, representing a total increase of \$8.1 million (50%). FP&L requests an effective date of May 19, 1985 for both the Phase I and Phase II rates. In the event that the Phase I rates are suspended for five months or the Phase II rates are suspended for one day, FP&L requests that the Phase I rates be deemed withdrawn. FP&L has also proposed a two-step increase in its rates for the transmission of interchange power and energy (*i.e.*, for economy, short-term firm, emergency, and firm power interchange services). Pursuant to a settlement agreement in Docket Nos. ER81-588-000, *et al.*, the rates for these services will not be increased for transactions scheduled for seven days or less.<sup>3</sup>

Notice of the filing was published in the *Federal Register*,<sup>4</sup> with comments due on or before April 10, 1985. Timely interventions were filed by a group of Florida municipal electric systems and Florida Municipal Power Agency (Florida Cities)<sup>5</sup> and by Seminole Electric

Cooperative, Inc. (Seminole). In support of its request for maximum suspension, Seminole raises various cost of service issues.<sup>6</sup> Seminole also requests that the Commission institute price squeeze procedures.

The Florida Cities request that the Commission reject FP&L's Phase I filing or, in the alternative, disallow either phase of FP&L filing as violative of the Commission's regulations and suspension policy.<sup>7</sup> In addition, the Florida Cities request summary disposition with respect to: (1) FP&L's inclusion of accumulated deferred investment tax credit (ADITC) as a separate component in its capital structure; and (2) FP&L's proposal to allocate to transmission service increased amounts related to its Storm Damage and Property Insurance Reserve Fund. In support of its request for a five month suspension for both phases of FP&L's proposed increase, the Florida Cities raise many of the same issues raised by Seminole as well as other cost of service issues.<sup>8</sup> The Florida Cities also allege price squeeze and request that the Commission consider their price squeeze concerns in determining the appropriate suspension period. Finally, the Florida Cities reserve their right to seek a joint transmission rate to be filed by FP&L's and Florida Power Corporation (FPC) for power transactions that are wheeled over both transmission systems.

Florida: the Fort Pierce Utilities Authority of the City of Fort Pierce; the Orlando Utilities Commission; and the Florida Municipal Power Agency.

<sup>1</sup>The issues raised include: (1) FP&L's allocation of demand related costs based on contract demands, rather than coincident peak demands; (2) inclusion of ADITC as a separate component of the capital structure; and (3) the claimed return on common equity.

<sup>2</sup>In particular, the Florida Cities contend that FP&L's phased increase request is contrary to the Commission's suspension policy, which was established in *West Texas Utilities Company*, 18 FERC ¶ 61,189, (1982) to discourage excessive filings. The Florida Cities argue that allowance of phased rate increases encourages utilities to file substantially excessive increases as a second phase of an increase while recovering the lower, cost justified rates filed as a first phase increase during the five month suspension period.

<sup>3</sup>Additional issues raised by the Florida Cities include: (1) Reliance on a 1975 depreciation study; (2) failure to amortize regulatory commission expense over the interval between transmission rate filings; and (3) the proposed increase in operating reserves. On May 1, 1985, the Florida Cities filed a supplement to their original motion to intervene in which they raise the following cost of service issues: (1) Transmission operation and maintenance expense; (2) cash working capital; (3) charges related to "circular flows;" (4) plant held for future use; and (5) allocation to transmission service of FP&L's 500 kV coal-by-wire lines. On May 7, 1985, FP&L's filed an answer to the Florida Cities' supplements motion to intervene, opposing relitigation of several of these issues as well as the joint transmission rate.

On April 25, 1985, FP&L's filed a timely response to the Florida Cities' and Seminole's pleadings. While not opposing the intervention of either party, FP&L's denies that rejection, summary disposition, a five-month suspension, or price squeeze procedures are warranted. Citing Commission and court action in its prior dockets, the company also asserts that collateral estoppel should be applied to bar relitigation of the joint transmission rate question.

On May 3, 1985, the Florida Cities filed a reply in opposition to FP&L's request that they be estopped from relitigating the joint transmission rate issue. According to the Florida Cities, there has been a change in factual circumstances since the matter was litigated in Docket No. ER-78-19.<sup>9</sup>

# Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make Seminole and the Florida Cities parties to this proceeding.

With respect to the Florida Cities' request for rejection, we find that FP&L's submittal substantially complies with the Commission's filing requirements. Furthermore, the Commission has permitted phased rate filings on a number of occasions. Accordingly, we find that the Florida Cities have shown no other basis for rejection and we shall deny their motion to reject.

As noted by the intervenors, the company has included ADITC as a separate component of its capital structure. This treatment is contrary to well-established Commission precedent.<sup>10</sup> Accordingly, we shall order summary disposition with respect to this issue. Because the revenue impact of this decision is substantial, we shall require the company to refile its cost of service and rates.

At the same time, we shall deny the Florida Cities' request for summary disposition regarding FP&L's allocation to transmission service of amounts relating to this Storm Damage and Property Insurance Reserve. The Florida Cities allege that the test year accruals to this fund which are attributable to nuclear plant property should be allocated directly to production, and that the amount attributable to

<sup>9</sup>On May 7, 1985, the Florida Cities moved for leave to reply to FP&L's answer of April 25, 1985. Because our rules do not provide for the filing of replies to answers, we shall deny the Florida Cities' motion and disregard its pleading.

<sup>10</sup>*E.g.*, *Central Power & Light Company*, 15 FERC ¶ 61,191 (1981).

<sup>1</sup>Utilities Commission of New Smyrna Beach; Orlando Utilities Commission; Florida Municipal Power Agency; and Seminole Electric Cooperative, Inc.

<sup>2</sup>See Attachment for rate schedule designations.

<sup>3</sup>At the time that FP&L tendered its filing, the settlement was pending Commission action. On April 3, 1985, the Commission approved the settlement and directed FP&L to file compliance rates. By letter dated April 5, 1985, FP&L advised the Commission that the rate sheets filed in Docket No. ER85-380-000 comply with the settlement agreement and obviate the need for FP&L to file a separate set of compliance rate sheets in Docket Nos. ER81-588-000, *et al.*

<sup>4</sup>50 FR 13413 (1985).

<sup>5</sup>The Florida Cities include the Cities of Homestead, Lake Worth, Starke, and Vero Beach.

hurricane damage to transmission and distribution lines should be excluded for lack of support. We note that FP&L has allocated the total reserve on the basis of plant ratios. Because the reserve is available for any damage expenses without regard to function, the allocation of reserves on the basis of plant ratios does not seem unreasonable *per se*. Further, while the company has failed to explain the basis for its test year accruals, they represent the same amount as accrued in Period I. Therefore, we do not believe that summary disposition of this issue is warranted.

With respect to FP&L's contention that collateral estoppel should bar relitigation of the Florida Cities' request to reserve a right to seek a joint transmission rate in this proceeding, we note that this issue was raised by the Florida Cities in a prior docket and rejected by the Commission.<sup>11</sup> The Florida Cities shall be precluded, therefore, from relitigating this issue unless they can demonstrate at hearing a change in factual circumstances.

As noted above, FP&L's proposed transmission rates for interchange transactions scheduled for seven days or less were filed to implement the company's settlement in Docket Nos. ER81-588-000, *et al.* We find that this portion of the company's submittal complies with our April 3, 1985 letter order and that no further compliance filing in those dockets is required.

Our preliminary review of FP&L's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept FP&L rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that both the proposed Phase I and Phase II rates may yield substantially excessive revenues. Accordingly, as requested by the company, we shall deem withdrawn the Phase I rates and we shall suspend the modified Phase II rates for five months,

to become effective on October 19, 1985, subject to refund.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.<sup>12</sup>

*The Commission orders:*

(A) The Florida Cities' motion to reject FP&L's filing is hereby denied.

(B) Summary disposition is hereby ordered, as noted in have demonstrated such circumstances in this case. The body of this order, with respect to FP&L's inclusion of ADITC as a separate component in its capital structure. Within thirty (30) days of the date of this order, FP&L shall refile its rates and supporting cost data to reflect this determination.

(C) All other motions for summary disposition are hereby denied.

(D) FP&L's submittal is hereby accepted for filing, as modified by summary disposition; the Phase I rates are deemed withdrawn; the Phase II long-term transmission rates and Phase II transmission rates for interchange transactions in excess of seven days are hereby suspended for five months, to become effective on October 19, 1985, subject to refund.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of FP&L's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

<sup>12</sup> Although we shall suspend FP&L's Phase II rates for the maximum period, our decision is not based upon Florida Cities' allegations of price squeeze. As we have repeatedly noted, the Commission does not, in the absence of extraordinary circumstances, consider unproved price squeeze claims in determining an appropriate suspension period. We are not persuaded that the Florida Cities have demonstrated such circumstances in this case.

20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,  
Secretary.

FLORIDA POWER & LIGHT CO., DOCKET NO. ER85-380-000, RATE SCHEDULE DESIGNATIONS, PHASE II RATES

Designation	Other party
(1) Supplement No. 5 to Rate Schedule FERC No. 46 (Supersedes Supplement No. 3).	City of Lakeland.
(2) Supplement No. 5 to Rate Schedule FERC No. 47 (Supersedes Supplement No. 4).	City of Tallahassee.
(3) Supplement No. 3 to Rate Schedule FERC No. 54.	City of New Smyrna Beach.
(4) Supplement No. 13 to Rate Schedule FERC No. 55 (Supersedes Supplement No. 9).	City of Homestead.
(5) Supplement No. 9 to Rate Schedule FERC No. 56 (Supersedes Supplement No. 7).	City of Lakewood.
(6) Supplement No. 10 to Rate Schedule FERC No. 57 (Supersedes Supplement No. 7).	Tampa Electric Co.
(7) Supplement No. 11 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 8).	City of Vero Beach.
(8) Supplement No. 18 to Rate Schedule FERC No. 59 (Supersedes Supplement No. 13).	City of New Smyrna Beach.
(9) Supplement No. 10 to Rate Schedule FERC No. 60.	Jacksonville Electric Authority.
(10) Supplement No. 7 to Rate Schedule FERC No. 61 (Supersedes Supplement No. 3).	Florida Power Corp.
(11) Supplement No. 6 to Rate Schedule FERC No. 62 (Supersedes Supplement No. 4).	City of Gainesville.
(12) Supplement No. 7 to Rate Schedule FERC No. 63 (Supersedes Supplement No. 5).	City of St. Cloud.
(13) Supplement No. 5 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 3).	Sebring Utilities Commission.
(14) Supplement No. 6 to Rate Schedule FERC No. 65 (Supersedes Supplement No. 2).	City of Kissimmee.
(15) Supplement No. 6 to Rate Schedule FERC No. 66 (Supersedes Supplement No. 3).	Orlando Utilities Commission.
(16) Supplement No. 17 to Rate Schedule FERC No. 68 (Supersedes Supplement No. 13).	Fort Pierce Utilities Authority.

<sup>11</sup> *Florida Power & Light Company*, 21 FERC ¶ 61,070 (1982), *reh'g denied*, 22 FERC ¶ 61,012 (1982), *aff'd sub nom. Ft. Pierce Utilities Authority v. FERC*, 730 F.2d 778, 781-785 (D.C. Cir. 1984).

**FLORIDA POWER & LIGHT CO., DOCKET NO. ER85-380-000, RATE SCHEDULE DESIGNATIONS, PHASE II RATES—Continued**

Designation	Other party
(17) Supplement No. 2 to Rate Schedule FERC No. 69.	Orlando Utilities Commission.
(18) Supplement No. 4 to Rate Schedule FERC No. 72.	Florida Municipal Power Agency.
(19) Supplement No. 1 to Rate Schedule FERC No. 78.	Seminole Electric Cooperative, Inc.
(20) Supplement No. 7 to Rate Schedule FERC No. 79.	City of Starks.
(21) Supplement No. 1 to Rate Schedule FERC No. 82.	Seminole Electric Cooperative, Inc.

[FR Doc. 85-12634 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. SA85-32-000]**

**Inland Ocean, Inc.; Petition for Adjustment**

Issued: May 21, 1985.

On May 8, 1985, Inland Ocean, Inc., filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) from the Btu refund obligation of Order Nos. 399 and 399-A.<sup>1</sup> Inland Ocean seeks a waiver of payment of uncollectible portions of the refund obligation attributable to interests owned by certain royalty and working interest owners from gas wells in which it is a working interest owner and operator.

Inland Ocean asserts that it has duly notified all of the royalty and working interest owners in question and that most have paid their share of the refunds. However, some of the interest owners have not paid and Inland Ocean has listed various reasons for its inability to collect from the defaulting interest owners.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12635 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

<sup>1</sup> Refunds Resulting from Btu Measurement Adjustments. 49 FR 37735 (Sept. 26, 1984) (Final Rule) (Order No. 399) and 49 FR 46353 (Nov. 26, 1984) (Order granting rehearing in part) (Order No. 399-A).

**[Docket No. SA85-23-000]**

**Kaneb Production Co., Petition for Adjustment**

Issued: May 17, 1985.

On April 15, 1985, Kaneb Production Company filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Kaneb seeks a waiver of applicable Commission regulations to allow Kaneb to retain the maximum lawful price under NGPA section 102 for sales of natural gas produced from two wells in Four League Bay Field, Terrebonne Parish, Louisiana.

Kaneb states that filings necessary to obtain well category determinations for the two wells in question were not made due to the illness of an employee and that when Kaneb discovered these omissions it promptly made the necessary filings. However, before the well category determinations were issued, Kaneb sold gas from the wells during the months of April, May and June 1984 at the section 102 price. In its petition, Kaneb requests waiver of the Commission's interim collection regulations, 18 CFR 273.202 and any other applicable regulation necessary to permit Kaneb to retain the section 102 price for sales made prior to issuance of the applicable well determinations.

Subpart K of Part 385 of the Commission's rules sets out the procedures that apply to this adjustment proceeding. Any person who wishes to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice is published in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12636 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. SA85-27-000]**

**Marion Corp.; Petition for Staff Adjustment**

Issued: May 17, 1985.

Take notice that on May 3, 1985, Marion Corporation filed with the Commission a petition for staff adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Marion states that it is a small producer of natural gas, and that under Commission Order Nos. 399 and 399-A, it owes Btu refunds to several purchasers to whom it has sold gas. Marion further states that it is in

voluntary bankruptcy proceedings under Chapter 11 of the U.S. Bankruptcy Code.

In its petition Marion states that it has filed a complaint and request for injunctive relief in the bankruptcy court asserting that the claim of its purchasers for refunds for Btu overcharges for gas purchased prior to March 4, 1983, are prepetition claims since Marion's obligation to reimburse its purchasers for Btu pricing adjustments arose at the time the gas was purchased.<sup>1</sup> Marion states that it is prohibited by the Bankruptcy Code from paying amounts other than those attributable to production after March 4, 1983. Marion states that all refunds related to post-March 4, 1983 production have been or will be paid by May 3, 1985.

Marion states that the requirements of the Bankruptcy Code are in conflict with the refund requirements of Order Nos. 399 and 399-A. Marion alleges that under the Bankruptcy Code it is not permitted to make distributions associated with prepetition production but is required to make such distributions under Order Nos. 399 and 399-A. According to Marion, failure to obtain relief from the requirements of Order Nos. 399 and 399-A could subject it to penalties under section 504(b)(6) of the NGPA. Marion further states that it has been unable up to this point to collect from some royalty and working interest owners the amounts of refunds owed by them.

Marion requests the Commission to waive any liability for the payment of refunds on prepetition production of working interest owners from whom Marion has been unable to collect or, alternatively, to grant Marion an extension of time within which to collect such refunds from these working interest owners. Marion also requests an extension of time pursuant to rule 2008 for payment of refunds on prepetition production attributable to royalty and working interest owners from whom Marion has been or will be able to collect until such time as Marion may make distribution under a confirmed plan of reorganization or until Marion's liability is otherwise resolved by the bankruptcy court.

Procedures applicable to the conduct of this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed

<sup>1</sup> The original bankruptcy petition was filed against Marion on March 4, 1983.

within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,  
Secretary

[FR Doc. 85-12637 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-9548-000 et al.]

### Murphy Oil Corp. a Delaware Corporation; Corporate Name Change

May 20, 1985.

Take notice that on August 30, 1984, Murphy Oil Corporation, a Delaware corporation, pursuant to the provision of the Natural Gas Act, as amended, filed a Motion to amend the Certificates of Public Convenience and Necessity, listed and described in Exhibit "A" attached hereto, by deleting therefrom the name of Murphy Oil Corporation and substituting therein the name Murphy Oil USA, Inc.

Effective October 31, 1983, the corporate name of Murphy Oil Corporation was changed, as evidenced by the Certificate of Amendment of Certificate of Incorporation, from Murphy Oil Corporation to Murphy Oil USA, Inc. Murphy Oil USA, Inc. now possesses all the rights, privileges, obligations, duties and responsibilities under each rate schedule that Murphy Oil Corporation possessed before the name change.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Exhibit "A" are hereby redesignated to reflect the corporate name change from Murphy Oil Corporation to Murphy Oil USA, Inc. Kenneth F. Plumb, Secretary.

### EXHIBIT "A" TO MOTION TO AMEND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY BY MURPHY OIL CORP.

Murphy Oil Corp. rate schedule No.	Purchaser	Docket Nos.
1	Texas Eastern Transmission Corp.	G-9548, G-11366, G-13428, and G-13429.
3	Arkansas Louisiana Gas Co.	G-4701.
4	do	G-4703.
5	Mississippi River Transmission Corp.	G-4711 and G-4712.
6	do	G-4699.
7	Arkansas Louisiana Gas Co.	G-4695.
8	Southern Natural Gas Co.	G-4709 and G-4698.
9	Arkansas Louisiana Gas Co.	G-4707.
10	Natural Gas Pipeline Co. of America.	G-4706.
11	El Paso Natural Gas Co.	G-4705.

### EXHIBIT "A" TO MOTION TO AMEND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY BY MURPHY OIL CORP.—Continued

Murphy Oil Corp. rate schedule No.	Purchaser	Docket Nos.
12	Arkansas Louisiana Gas Co.	G-9176 and G-15140.
13	Texas Eastern Transmission Corp.	G-9550, G-11367, and G-4710.
14	do	G-12025 and G-13429.
15	do	G-12988.
17	do	G-12025 and G-14135.
18	do	G-19139.
19	Arkansas Louisiana Gas Co.	C160-487.
20	do	C163-701.
21	do	C165-380.
22	Natural Gas Pipeline Co. of America.	C169-1007.
24	Northwest Pipeline Corp.	C172-135.
25	Tennessee Gas Transmission Co.	C172-807.
26	United Gas Pipe Line Co.	Unknown.
27	Natural Gas Pipeline Co. of America.	C176-84.
28	Mid-Louisiana Gas Co.	C176-410.
30	ANR (formerly Michigan Wisconsin Pipeline Co.)	C178-630.
31	Consolidated Gas Supply Corp.	C178-1168.
32	Natural Gas Pipeline Co. of America.	C179-84.

[FR Doc. 85-12638 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C177-762-001 et al., and C185-444-000 et al.]

### Pennzoil Producing Co. (Successor to Pinto, Inc., et al.), and Proven Properties, Inc. (Successor to Pennzoil Producing Company); Applications for Certificates of Public Convenience and Necessity

May 21, 1985.

Take notice that on May 8, 1985, Pennzoil Producing Company (Pennzoil), of P.O. Box 2967, Houston, Texas 77252-2967 and Proven Properties, Inc. (PPI), of P.O. Box 2049, Houston, Texas 77252-2049 filed applications for certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act and Sections 157.23 through 157.28 of the Commission's Regulations authorizing Pennzoil and PPI to continue the sale of natural gas in interstate commerce, which sale were previously made by Pinto, Inc. (Pinto), et al.

On January 31, 1985, effective January 1, 1985, Pinto et al., assigned all of their rights and interest in various lands and leases to Pennzoil. Subsequently, but also effective January 1, 1985, Pennzoil assigned one-half of its newly acquired interest to PPI.

Applications by Pennzoil and PPI for Certificates of Public Convenience and

Necessity authorizing the continuation of sales in interstate commerce previously made by Pinto, Inc., et al., effective January 1, 1985, the effective date upon which Pennzoil and PPI succeeded to the interests of Pinto, Inc., et al., are listed on the attached Appendix.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 5, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

### APPENDIX

Pennzoil Producing Co.	Location	Proven Properties, Inc.
C177-762-001	Vermilion block 228	C185-444-000
C177-373-001	West Cameron block 586	C185-445-000
C175-436-000	West Cameron block 587	C185-446-000
C173-455-001	East Cameron block 270	C185-447-000
	Eugene Island block 330	
C178-787-002	High Island block A-323	C185-448-000
C178-786-001		
C179-458-001	High Island block A-339	C185-449-000
C179-457-001	High Island block A-340	
C178-785-002	High Island block A-520	C185-450-000
C178-782-002		
C162-420-002	High Island block A-570	C185-451-000
C184-407-001	South Pass block 6	C185-452-000
C185-443-000	Patterson Field, LA	C185-453-000

[FR Doc. 12639 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

### R&D Power Co. et al; Availability of Environmental Assessment and Finding of No Significant Impact

May 21, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemptions listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
<b>Exemptions</b>					
8122-000	Placerville	CA	Iowa Canyon Creek	Placerville	R&D Power Co.
8604-000	Seabright Dam	ME	Megunticook River	Camden	Havilah S. Hawkins and Joseph A. Sawyer
8741-000	Redfield Dam	IA	Middle Racoon River	City of Redfield	Dallas County, Hydro Co. Corp.
8791-000	Starks Hydroelectric Project	ME	Lemon Stream	Starks	JK, Inc.
<b>Licenses</b>					
2574-000	Lockwood	ME	Kennebec River	Waterville and Winslow	Mistar Manufacturing Corp.
2920-001	Boca Project	CA	Little Truckee River	Truckee	Truckee-Donner public utility district.
3208-003	Hume Lake	CA	Ten Mile Creek	Hume	Lewis Evans
4332-001 and 5698-000	High Falls	NY	Chateaugay River	Chateaugay	Long Lake Energy Corp. and Triton Power
6154-005	Mill and Sulphur Creek	CA	Mill Creek and Sulphur Creek	Dinmore	Mill and Sulphur Creek powerplant partnership.
6715-000 and 6047-002	Long Ravine Pipe	CA	Lower Boardman Canal	Colfax	Gold Run Hydro Associates and Placer County Water Agency
6715-000 and 6049-002	Hayford Pipe	CA	Lower Boardman Canal	Pipcroft	Gold Run Hydro Associates and Placer County Water Agency
7043-001	Red River Lock and Dam No. 1	LA	Red River	Minden, Natchitoches, and Ruston	Cities of Minden, Natchitoches, and Ruston
7274-001	Lake Algonquin	NY	Secandaga River	Wells	Town of Wells
7387-000	Pierceland	NY	Requette River	Pierceland	Niagara Mohawk Power Corp.
7396-001	Abiqua Dam	NM	Rio Chama	Los Alamos	Incorporated County of Los Alamos
8278-000	Cedar Draw Creek	ID	Cedar Draw Creek	Twin Falls	Crystal Springs Hydroelectric Co.
8350-000	Littleville	MA	Middle Branch Westfield	Chester and Huntington	Littleville Power Co., Inc.
3603-002	Ruedi	CO	Fryingpan River	Ruedi	City of Aspen and County of Pitkin

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-12640 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. C185-312-000 et al., and C185-357-000 et al.]

**Sonat Exploration Co. (Successor to Eason Oil Co. and Spartan Gas Co.; Applications for Certificates of Public Convenience and Necessity**

May 20, 1985.

Take notice that on April 8, and May 3, 1985, Sonat Exploration Company (Applicant), of P.O. Box 1513, Houston, Texas 77251-1513, filed applications pursuant to Section 7 of the Natural Gas Act, for a Certificate of Public Convenience and Necessity covering the sale of gas from certain properties once owned by Eason Oil Company and Spartan Gas Company and produced under Small Producer Certificates, and now assigned to Applicant.

Applicant proposes to continue service as rendered by Eason Oil

Company as authorized in Docket No. CS71-831, and Spartan Gas Company as authorized in FPC Order 411 and 428-B, by selling gas to various gas purchasers pursuant to numerous gas purchase and sales agreements which are further set forth in Exhibit "B" and on file with this Commission and open for public inspection. Applicant purchased the assets of Eason Oil Company and Spartan Gas Company on January 18, 1985, effective July 1, 1984.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 4, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

**Exhibit "B"**

Sonat hereby makes application for Rate Schedules. Attached hereto, in a separate binder, are Gas Sales Agreements on the transferred

properties. Sonat requests the following designated rate schedule numbers be assigned as follows:

Purchaser	Date	Requested rate schedule
Southern Natural Gas	(12/1/72)	33 C85-312-000
Arkansas-Louisiana	(12/29/65)	34 C85-313-000
Do	(10/13/82)	35 C85-314-000
Miss. River Trans.	(12/21/82)	36 C85-315-000
Natural Gas	(10/1/67)	37 C85-316-000
Texas Eastern	(2/17/82)	38 C85-317-000
TGT	(9/3/58)	39 C85-318-000
TGT	(12/23/55)	40 C85-319-000
TGT	(11/8/78)	41 C85-320-000
TGT	(5/11/80)	42 C85-321-000
TGT	(10/23/78)	43 C85-322-000
TGT	(3/25/82)	44 C85-323-000
TGT	(5/20/80)	45 C85-324-000
TGT	(5/8/91)	46 C85-325-000
Transco	(8/20/74)	47 C85-326-000
Do	(2/1/72)	48 C85-327-000
United	(11/21/57)	49 C85-328-000
United Gas P/L	(11/20/67)	50 C85-329-000
Arkansas-Louisiana	(7/13/81)	51 C85-330-000
Southern Natural Gas	(6/1/84)	52 C85-331-000
Florida Gas Trans.	(8/16/76)	53 C85-332-000
Transco	(9/1/76)	54 C85-333-000
Arkansas-Louisiana	(3/30/64)	55 C85-334-000
Do	(7/13/84)	56 C85-335-000
Do	(10/13/82)	57 C85-336-000
Do	(10/27/83)	58 C85-337-000
Do	(2/29/84)	59 C85-338-000
Do	(3/13/70)	60 C85-339-000
Natural Gas	(2/5/59)	61 C85-340-000
Michigan-Wisconsin	(7/15/68)	62 C85-341-000
Do	(7/25/80)	63 C85-342-000
Do	(6/16/89)	64 C85-343-000
Do	(2/26/75)	65 C85-344-000
Do	(1/23/64)	66 C85-345-000
Do	(7/5/68)	67 C85-346-000
Do	(5/15/81)	68 C85-347-000
Do	(4/19/60)	69 C85-348-000
Natural Gas	(10/25/75)	70 C85-349-000
Do	(1/29/75)	71 C85-350-000
Do	(6/14/78)	72 C85-351-000
Natural Gas	(4/23/64)	73 C85-352-000
Michigan-Wisconsin	(9/18/79)	74 C85-353-000
Panhandle Eastern	(3/25/60)	75 C85-354-000
Arkansas-Louisiana	(12/5/83)	76 C85-355-000
Northern Natural	(8/19/77)	77 C85-356-000
Columbia Gas	(12/31/40)	78 C85-357-000
Do	(9/18/42)	79 C85-358-000
Do	(7/16/43)	80 C85-359-000
Do	(4/27/44)	81 C85-360-000
Do	(2/11/44)	82 C85-361-000
Do	(12/3/64)	83 C85-362-000
Do	(12/3/64)	84 C85-363-000

Purchaser	Date	Requested rate schedule
Do.....	(3/3/85)	85 C185-364-000
Do.....	(10/16/87)	86 C185-365-000
Do.....	(11/6/70)	87 C185-366-000
Do.....	(3/12/75)	88 C185-367-000
Do.....	(11/6/70)	89 C185-368-000
Consolidated.....	(7/12/78)	90 C185-369-000
Columbia Gas.....	(6/21/29)	91 C185-370-000

[FR Doc. 85-12641 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-59-000]

**State of Louisiana, Energy Reserves Group, Inc., John Wilfert No. 1 Well, FERC JD No. 84-25246; Petition To Reopen and Vacate Final Well Category Determination and Request To Withdraw**

Issued: May 21, 1985.

On July 12, 1984, Energy Reserves Group, Inc. (Energy Reserves), filed with the Federal Energy Regulatory Commission a request to withdraw its application for a final well category determination that natural gas from the John Wilfert No. 1 Well, located in Acadia Parish, Louisiana, qualifies as production enhancement natural gas under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).<sup>1</sup> The determination by the Louisiana Office of Conservation became final on May 3, 1984.<sup>2</sup> Accordingly, a Commission order is required in order to reopen the final determination and permit withdrawal.

Energy Reserves apparently desires to withdraw the application because it now believes that the gas from the John Wilfert No. 1 Well does not meet all the requirements for qualification as production enhancement gas under § 271.704(c).

The Commission gives notice that the question of whether refunds plus interest, as computed under § 154.102(c), will be required is a matter which is subject to review and final determination by the Commission.

Within 30 days of publication in the Federal Register, any person may file a protest to Energy Reserves' request or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. If you wish to become a party to this proceeding, you must file a

petition to intervene. See Rules 214 or 211.<sup>3</sup>

Kenneth F. Plumb,

Secretary

[FR Doc. 85-12642 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-3-000]

**State of New Mexico, Big Eddy Unit Well No. 65, FERC JD No. 81-42412; Petition To Reopen Final Determination and Request To Withdraw**

Issued: May 21, 1985.

On July 22, 1981, the Energy and Minerals Department of the Oil Conservation Division of the State of New Mexico (New Mexico) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw its application that natural gas from the Big Eddy Unit Well No. 65 in the Morrow Formation located in Eddy County, New Mexico qualifies as new natural gas well under Section 102 of the Natural Gas Policy Act of 1978 (NGPA).<sup>1</sup> The subject determination became final on August 14, 1981.<sup>2</sup>

On November 3, 1982, New Mexico informed the Commission that included in another Section 102 application, it mistakenly forwarded to the Commission an incorrect Section 102 determination for the subject well in the Morrow Formation.

The Commission hereby gives notice that the question of whether refunds, plus interest calculated under § 154.102(c) (18 CFR 154.102(c) (1983)), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the Federal Register with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure.<sup>3</sup> All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-12643 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[OPTS-51572; TSH-FRL 2840-4]

**Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five PMNs and provides a summary of each.

**DATES:** Close of Review Period:

- P 85-935, 85-936, 85-937 85-938, 85-939 and 85-940—August 7, 1985.  
 P 85-941, 85-942, 85-943 85-944, 85-945, 85-946, 85-947 and 85-948—August 10, 1985.  
 P 85-949, 85-950, 85-951 85-952, 85-953, 85-954, 85-955, 85-956, 85-957, 85-958, 85-959 and 85-860—August 11, 1985.  
 P 85-961, 85-962, 85-963, 85-964, 85-965, 85-966, 85-967, 85-968 and 85-969—August 12, 1985.  
 P 85-970, 85-971, 85-972 85-973, 85-974, 85-975, 85-976, 85-977, 85-978 and 85-979—August 13, 1985.  
 Written comments by:  
 P 85-935, 85-936, 85-937, 85-938, 85-939 and 85-940—July 8, 1985.  
 P 85-941, 85-942, 85-943, 85-944, 85-945, 85-946, 85-947 and 85-948—July 11, 1985.  
 P 85-949, 85-950, 85-951, 85-952, 85-953, 85-954, 85-955, 85-956, 85-957, 85-958, 85-959 and 85-860—July 12, 1985.  
 P 85-961, 85-962, 85-963, 85-964, 85-965, 85-966, 85-967, 85-968 and 85-969—July 13, 1985.  
 P 85-970, 85-971, 85-972, 85-973, 85-974, 85-975, 85-976, 85-977, 85-978 and 85-979—July 14, 1985.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51572]" and the specific PMN

<sup>1</sup> 15 U.S.C. 3301-3432 (1982).<sup>2</sup> NGPA section 503(d) and 18 CFR 275.202(a) (1984).<sup>3</sup> 18 CFR 385.214 or 385.211 (1983).<sup>4</sup> 15 U.S.C. 3301-3432 (1982).<sup>5</sup> NGPA section 503(d) and 18 CFR 275.202(a).<sup>6</sup> 18 CFR 385.214 or 385.211 (1983).

number should be sent to: Document Control Officer (TS-793); Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

**FOR FURTHER INFORMATION CONTACT:**

Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**P 85-935**

**Manufacturer.** Confidential.  
**Chemical.** (G) Isophorone diisocyanate adduct of a polyether glycol, an alkanediol, and a substituted alcohol.  
**Use/Production.** (G) A formulation component for open, nondispersive use. Prod. range: 3,000-6,000 kg/yr.  
**Toxicity Data.** No data submitted.  
**Exposure.** Manufacture: A total of 7 workers.  
**Environmental Release/Disposal.** 0.01 kg to 2.00 kg released to land. Disposal by landfill.

**P 85-936**

**Importer.** BASF Wyandotte Corporation.  
**Chemical.** (S) Benzamide, N,N'-[14-chloro-5,6,7,12,13,17,22,23,25,28,30-decahydro-5,7,12,17,22,25,28-hepta-oxanaphthol[2,3-C] bis naphth[2',3':6,7]indolo[3,2-a:3',2'-i]acridine-1,18-diyl]bis-.  
**Use/Import.** (S) Vat dye for cellulosic fibers. Import range: Confidential.  
**Toxicity Data.** Acute oral: 10,000 mg/kg; Acute dermal: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.  
**Exposure.** Use: Dermal, a total of 1 worker, up to 15 min/batch.  
**Environmental Release/Disposal.** Confidential.

**P 85-937**

**Manufacturer.** Confidential.  
**Chemical.** (G) Alkyl diamine.  
**Use/Production.** (G) Epoxy reactant. Prod. range: Confidential.  
**Toxicity Data.** Acute oral: Male—254 mg/kg, female—246 mg/kg, combined—250 mg/kg; Irritation: Skin—Severe,

Eye—Extremely irritating; Inhalation: 22±1.8 ppm (4-hrs).

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential. Disposal by publicly owned treatment works (POTW).

**P 85-938**

**Importer.** Confidential.  
**Chemical.** (G) Polymer of substituted ethenes, aliphatic acid, substituted aliphatic acid.  
**Use/Import.** (S) Industrial auxiliary for paper. Import range: Confidential.  
**Toxicity Data.** Acute oral: Male and female—>5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; IC<sub>50</sub> (Brachydanio rerio): >100 mg/l.  
**Exposure.** None expected.  
**Environmental Release/Disposal.** No release.

**P 85-939**

**Importer.** Confidential.  
**Chemical.** (G) Polymer of a natural product oil and alkylene oxide.  
**Use/Import.** (S) Industrial auxiliary for paper. Import range: Confidential.  
**Toxicity Data.** Acute oral: >5.0 ml/kg; Irritation: Skin—Irritant, Eye—Non-irritant; IC 29 hr (Leuciscus idus): 20 mg/l; IC 48 hr (Leuciscus idus): 10 mg/l; IC 48 hr (Leuciscus idus): 5 mg/l.  
**Exposure.** None expected.  
**Environmental Release/Disposal.** No data submitted.

**P 85-940**

**Manufacturer.** Confidential.  
**Chemical.** (G) Saturated branched chain secondary alcohol/ketone mixture having 12 carbon atoms.  
**Use/Production.** (G) Soaps and detergents, functional products and fine fragrance additives. Prod. range: Confidential.  
**Toxicity Data.** Acute oral: 5.8 g/kg; Irritation: Skin—Non-irritant, Eye—Moderate; Human repeated insult patch test: Non-irritant/Non-sensitizer; Ames test: Negative; Micronucleus test: Negative.  
**Exposure.** Manufacture: Dermal, a total of 7 workers, up to 3 hrs/da, up to 40 da/yr.  
**Environmental Release/Disposal.** 0.5–1.0 kg/batch to 10 cu. feet released to air. Disposal by incineration and on-site pretreatment plant.

**P 85-941**

**Manufacturer.** The Dow Chemical Company.  
**Chemical.** (G) Substituted alkylamine salt.  
**Use/Production.** (G) Mining chemical. Prod. range: Confidential.

**Toxicity Data.** Acute oral: >1,300 mg/kg; LC<sub>50</sub> 48 hr (Daphnia magna): 8.5 mg/L; LC<sub>50</sub> 96 hr (Pimephales promelas): 15 mg/L.

**Exposure.** Manufacture: Dermal.  
**Environmental Release/Disposal.** Release to water. Disposal by navigable waterway after treatment.

**P 85-942**

**Manufacturer.** The Dow Chemical Company.  
**Chemical.** (G) Substituted alkyl propanamide.  
**Use/Production.** (S) Chemical intermediate. Prod. range: Confidential.  
**Toxicity Data.** Acute oral: >2,000 mg/kg; Irritation: Skin—Slight/moderate, Eyes—Moderate; LC<sub>50</sub> 48 hr (Daphnia magna): 39 mg/L; LC<sub>50</sub> 96 hr (Pimephales promelas): 41 mg/L; Acute dermal: >2,000 mg/kg.

**Exposure.** Manufacture and use: Dermal.  
**Environmental Release/Disposal.** Release to water. Disposal by navigable waterway after treatment.

**P 85-943**

**Manufacturer.** The Dow Chemical Company.  
**Chemical.** (G) Substituted alkyl acetamide.  
**Use/Production.** (S) Chemical intermediate. Prod. range: Confidential.  
**Toxicity Data.** No data submitted.  
**Exposure.** Manufacture and use: Dermal.  
**Environmental Release/Disposal.** Release to water. Disposal by navigable waterway after treatment.

**P 85-944**

**Manufacturer.** Ashland Chemical Company.  
**Chemical.** (G) Phenol formaldehyde resoles.  
**Use/Production.** (G) Open, non-dispersive use. Prod. range: Confidential.  
**Toxicity Data.** No data submitted.  
**Exposure.** Manufacture: Dermal, a total of 9 workers, up to 3 hrs/da, up to 20-25 da/yr.

**Environmental Release/Disposal.** Trace release to air and POTW with 0.17 batch to land. Disposal by POTW.

**P 85-945**

**Manufacturer.** Ashland Chemical Company.  
**Chemical.** (G) Acrylic ester terpolymer.  
**Use/Production.** (G) Pressure sensitive adhesive for commercial use. Prod. range: Confidential.  
**Toxicity Data.** No data submitted.

**Toxicity Data.** Acute oral: Male—2,789 mg/kg, Female—1,786 mg/kg, Combined—2,217 mg/kg.

**Exposure.** Manufacture and processing: Dermal, a total of 24 workers, up to 4 hrs/da, up to 20 da/yr.

**Environmental Release/Disposal.** 2 kg/batch released to water with 10 kg/batch to land. Disposal by on-site biological treatment plant, landfill and 2 to 25 kg/batch incinerated.

#### P 85-961

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Amine polyglycol.

**Use/Production.** (S) Industrial polyol for urethane polymer manufacture. Prod. range: Confidential.

**Toxicity Data.** No data on the PMN substance submitted.

**Exposure.** Manufacture: Dermal, a total of 19 workers.

**Environmental Release/Disposal.** Release to water and land. Disposal by navigable waterway after treatment and landfill.

#### P 85-962

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Amine polyglycol.

**Use/Production.** (S) Industrial polyol for urethane polymer manufacture. Prod. range: Confidential.

**Toxicity Data.** Acute oral: >1,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—No irritation.

**Exposure.** Manufacture: Dermal, a total of 19 workers.

**Environmental Release/Disposal.** Release to water and land. Disposal by navigable waterway after treatment and landfill.

#### P 85-963

**Importer.** Confidential.

**Chemical.** Further clarification needed before information can be released to the public files.

**Use/Import.** (S) Industrial and commercial surface coating for molded parts and wood. Import range: 21,000–86,400 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Import, processing and use: Dermal, a total of 20 workers at four industrial sites.

**Environmental Release/Disposal.** No release.

#### P 85-964

**Importer.** Confidential.

**Chemical.** (G) Phenolic condensation product of xylene-formaldehyde resin.

**Use/Import.** (S) Industrial and commercial additive to accelerate

through-drying of alkyd coatings. Import range: 1,400–2,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Import, processing and use: Dermal, a total of 20 workers at four industrial sites.

**Environmental Release/Disposal.** No release.

#### P 85-965

**Importer.** Confidential.

**Chemical.** (G) Phenolic condensation product of xylene-formaldehyde resin.

**Use/Import.** (S) Industrial and commercial additive to accelerate through-drying of alkyd coatings. Import range: 1,400–2,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Import, processing and use: A total of 20 workers at four industrial sites.

**Environmental Release/Disposal.** No release.

#### P 85-966

**Manufacturer.** National Starch and Chemical Corporation.

**Chemical.** (S) 3,9-diethyl tridecan-6-one.

**Use/Production.** (G) Chemical intermediate which is destructively consumed in subsequent chemical manufacture. Prod. range: 11,850 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: Dermal, a total of 10 workers, up to 2 hrs/da, up to 8 da/yr.

**Environmental Release/Disposal.** 1 to 2 kg/batch released to air with 30 kg/batch to water and ½ to 145 kg/batch to land. Disposal by POTW

#### P 85-967

**Manufacturer.** National Starch and Chemical Corporation.

**Chemical.** (S) 7-tridecene-6-one, 3, 9-diethyl.

**Use/Production.** (G) Chemical intermediate which is destructively consumed in subsequent chemical manufacture. Prod. range: 24,961 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture: Dermal, a total of 7 workers, up to 4 hrs/da, up to 4 da/yr.

**Environmental Release/Disposal.** ½ to 10 kg/batch released to land with 10 kg/batch to water. Disposal by discharge to aerated lagoons.

#### P 85-968

**Manufacturer.** National Starch and Chemical Corp.

**Chemical.** (S) Heptan-2-one, 5-ethyl.

**Use/Production.** (G) Used as a chemical intermediate, destructively utilized in subsequent chemical manufacture. Prod. range: 12,740 kg/hr.

**Toxicity Data.** No data submitted.

**Exposure.** Dermal, a total of 4 workers, up to 3 hrs/da, up to 4 da/yr.

**Environmental Release/Disposal.** 2 kg/batch released to air with ½ to 8 kg/batch to land and 3 to 10 kg/batch to water. Disposal by on-site biological treatment system and spray field.

#### P 85-969

**Manufacturer.** National Starch and Chemical Corp.

**Chemical.** (S) 3-Hepten-2-one, 5-ethyl.

**Use/Production.** (G) Used as a chemical intermediate, destructively utilized in subsequent chemical manufacture. Prod. range: 13,100 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Dermal, a total of 7 workers, up to 2 hrs/da, up to 4 da/yr.

**Environmental Release/Disposal.** ½ kg/batch released to air with 1 to 10 kg/batch to land and 1 kg/batch to water. Disposal by on-site biological treatment system and spray field.

#### P 85-970

**Manufacturer.** Confidential.

**Chemical.** (S) Humic acids, ammonium salts.

**Use/Production.** (G) Destructive use. Prod. range: Confidential.

**Toxicity Data.** No data on the PMN substance submitted.

**Exposure.** Manufacture: Dermal and inhalation, a total of 3 workers.

**Environmental Release/Disposal.** No release to air, water and land.

#### P 85-971

**Manufacturer.** Confidential.

**Chemical.** Further clarification needed before information can be released to the public files.

**Use/Production.** (S) Industrial electronic photoresist and soldermask. Prod. range: Confidential.

**Toxicity Data.** Acute oral: 5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Severe; Inhalation: <2.0 mg/L.

**Exposure.** Confidential.

**Environmental Release/Disposal.** No release.

#### P 85-972

**Manufacturer.** Confidential.

**Chemical.** Further clarification needed before information can be released to the public files.

**Use/Production.** (S) Industrial electronic photoresist and soldermask. Prod. range: Confidential.

**Toxicity Data.** No data submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** No release.

## P 85-973

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Triglycidyl ether of substituted tri(hydroxy phenyl)methane.

**Use/Production.** (S) Industrial manufacture of structural composite and printed circuit board and transfer molding of electronics parts. Prod. range: Confidential.

**Toxicity Data.** No data on the PMN substance submitted.

**Exposure.** Manufacture: Dermal, a total of 10 workers.

**Environmental Release/Disposal.** 10 parts per million (ppm) released to water with up to 0.5 kg/sample/batch to air and land. Disposal by incineration, landfill and navigable waterway after treatment.

## P 85-974

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Modified trisphenol novolac.

**Use/Production.** (S) Site-limited intermediate for epoxy resin. Prod. range: Confidential.

**Toxicity Data.** No data on the PMN substance submitted.

**Exposure.** Manufacture and use: Dermal, a total of 5 workers.

**Environmental Release/Disposal.** Approximately 0.01 kg/batch released to water with up to 0.5 kg/sample/batch to air and land. Disposal by incineration, landfill and on-site waste treatment plant.

## P 85-975

**Importer.** Confidential.

**Chemical.** (G) Substituted alkenol.

**Use/Import.** (G) Highly dispersive end use. Import range: Confidential.

**Toxicity Data.** Acute oral: < 8,000 mg/kg; Irritation: Skin—No irritation, Eye—No irritation; Human repeated insult patch test: No reaction; Phototoxicity: Rarely leads to the undesired effects; Open epicutaneous test: No allergic sensitization.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential. Disposal by POTW.

## P 85-976

**Manufacturer.** Confidential.

**Chemical.** Further clarification needed before information can be released to the public files.

**Use/Production.** (G) Multiple use paint product. Prod. range: 75,000 to 392,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture and processing: Dermal, a total of 88 workers, up to 8 hrs/da, up to 104 da/yr.

**Environmental Release/Disposal.** 4 to 150 kg/batch released to land. Disposal by incineration and landfill.

## P 85-977

**Manufacturer.** Confidential.

**Chemical.** (G) Substituted alkyl amine.

**Use/Production.** (G) Industrial and site-limited intermediate. Prod. range: 4,500 to 30,000 kg/yr.

**Toxicity Data.** No data submitted.

**Exposure.** Manufacture and processing: Dermal, a total of 57 workers, up to 8 hrs/da, up to 23 da/yr.

**Environmental Release/Disposal.** Trace amount to 35 kg/batch released to land. Disposal by incineration and landfill.

## P 85-978

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Amine polyglycol.

**Use/Production.** (S) Industrial polyol for urethane polymer manufacture. Prod. range: Confidential.

**Toxicity Data.** No data on the PMN substance submitted.

**Exposure.** Manufacture: Dermal, a total of 19 workers.

**Environmental Release/Disposal.** Less than 10 to 10 kg/batch released to water. Disposal by navigable waterway after treatment.

## P 85-979

**Manufacturer.** The Dow Chemical Company.

**Chemical.** (G) Amine polyglycol.

**Use/Production.** (S) Industrial polyol for urethane polymer manufacture. Prod. range: Confidential.

**Toxicity Data.** Acute oral: > 1,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Slight to moderate.

**Exposure.** Manufacture: Dermal, a total of 19 workers.

**Environmental Release/Disposal.** Less than 10 to 10 kg/batch released to water. Disposal by navigable waterway after treatment.

Dated: May 20, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-12594 Filed 5-23-85; 8:45 am]

BILLING CODE 6880-50-M

[PF-413; PH-FRL 2840-7]

### Certain Companies; Pesticide Tolerance Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

**ADDRESS:** By mail, submit comments identified by the document control number [PF-413] and the petition number, attention Product Manager (PM-21), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

### FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 229, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions (PP), relating to the establishment of tolerance for certain pesticide chemicals in or on certain agricultural commodities.

### Initial Filings

1. PP 5F3250. Janssen Pharmaceutical, Box 344, Washington Crossing, NJ 08560. Proposes to amend 40 CFR 180.413 by establishing tolerances for the combined residues of the insecticide imazalil (1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy) ethyl]-1H-imidazole and its metabolite (1-[2,4-dichlorophenyl]-2-[1H-imidazole-1-yl]-1-ethanol) in or on the

*Exposure.* Manufacture: Dermal, a total of 5 workers, up to 6 hrs/da, up to 15-25 da/yr.

*Environmental Release/Disposal.* No release.

#### P 85-946

*Manufacturer.* Confidential.  
*Chemical.* (G) Polysubstituted benzene.

*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.  
*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential. Disposal by POTW.

#### P 85-947

*Manufacturer.* Confidential.  
*Chemical.* (G) Polysubstituted benzene.

*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.  
*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential. Disposal by POTW.

#### P 85-948

*Manufacturer.* Confidential.  
*Chemical.* (G) Polysubstituted benzene.

*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.  
*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential. Disposal by POTW.

#### P 85-949

*Manufacturer.* Confidential.  
*Chemical.* (G) Organosilane polymer.  
*Use/Production.* (G) Industrial coating component. Prod. range: 12,000-112,000 kg/yr.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture and processing: Dermal, a total of 58 workers, up to 8 hrs/da, up to 32 da/yr.  
*Environmental Release/Disposal.* 5 to 150 kg/batch released to land. Disposal by incineration and landfill.

#### P 85-950

*Manufacturer.* Confidential.  
*Chemical.* (G) Aralkylene ether epoxide.

*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.  
*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Manufacture: Dermal, a total of 10 workers, up to 8 hrs/da, up to 10 da/yr.

*Environmental Release/Disposal.* Confidential. Disposal by industrial waste water treatment facility.

#### P 85-951

*Manufacturer.* Confidential.  
*Chemical.* Further clarification needed before information can be released to the public files.

*Use/Production.* (S) Intermediate for manufacture of latex paint additive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 10 da/yr.

*Environmental Release/Disposal.* Confidential. Disposal by industrial waste water treatment facility.

#### P 85-952

*Manufacturer.* Confidential.  
*Chemical.* (G) Polyether polyurethane polymer.

*Use/Production.* (G) Paint additive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture: Dermal, a total of 5 workers, up to 6 hrs/da, up to 30 da/yr.

*Environmental Release/Disposal.* Confidential.

#### P 85-953

*Importer.* Huels Corporation.  
*Chemical.* (G) Polyacrylate/vinyl chloride graft polymer.

*Use/Import.* (S) Industrial window and constructional sections. Import range: 800,000-2,500,000 kg/yr.

*Toxicity Data.* Acute oral: >10,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: Non-mutagenic.  
*Exposure.* No data submitted.

*Environmental Release/Disposal.* No data submitted.

#### P 85-954

*Importer.* Confidential.  
*Chemical.* (G) Polydimethylsiloxane, methyl alkene siloxane copolymer.

*Use/Import.* (G) Release coating. Import range: Confidential.

*Toxicity Data.* Acute oral: >15.0 g/kg; Irritation: Skin—No irritation, Eye—Slight; Ames Test: Not mutagenic.

*Exposure.* No data submitted.  
*Environmental Release/Disposal.* No data submitted.

#### P 85-955

*Importer.* Confidential.  
*Chemical.* (G) Copolymer of acrylonitrile, acrylic acid and aliphatic amine, salt.

*Use/Import.* (S) Retanning agent for chrome tanned leather. Import range: Confidential.

*Toxicity Data.* Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative; LC<sub>50</sub> 96 hr (Rainbow trout): >500 mg/l.

*Exposure.* Processing: Dermal.

*Environmental Release/Disposal.* No data submitted.

#### P 85-956

*Importer.* Confidential.  
*Chemical.* (G) Substituted cyclohexenylalkanone.

*Use/Import.* (G) Ingredient for use in consumer products; highly dispersive use. Import range: 100-1,000 kg/yr.

*Toxicity Data.* Acute oral: Male—4.2 g/kg, Female—2.7 g/kg, Combined—3.4 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Positive; Ames Test: Negative; Delayed contact hypersensitivity: Positive.

*Exposure.* Use: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

*Environmental Release/Disposal.* Disposal by water treatment plant.

#### P 85-957

*Importer.* Confidential.  
*Chemical.* (G) Alkylpolyoxyethyl ether.

*Use/Import.* (G) Detergent for scouring polyester/cotton fabrics in textile mills. Import range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.* Confidential.

#### P 85-958

*Manufacturer.* Sylvachem Corporation.

*Chemical.* (G) Imidazoline.  
*Use/Production.* (G) Co-reactant to be used in open, nondispersive use. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture: Dermal, a total of 25 workers, up to 3 hrs/da, up to 30 da/yr.

*Environmental Release/Disposal.* Half to one pound released to land. Disposal by approved landfill.

#### P 85-959

*Manufacturer.* GTE Products Corporation.

*Chemical.* (S) Barium fluorobromide.  
*Use/Production.* (S) Industrial and commercial phosphor for radiography. Prod. range: Confidential.

*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.

*Environmental Release/Disposal.* 0.01 kg/batch released to air with 0.03 kg/batch to water. Disposal by navigable waterway.

#### P 85-960

*Manufacturer.* Confidential.  
*Chemical.* (G) Substituted triazole.  
*Use/Production.* (G) Lubricant additive. Prod. range: Confidential.

commodities barley (forage), and wheat (forage) at 2.0 parts per million (ppm).

The proposed analytical method for determining residues is gas liquid chromatography.

2. *PP 5F3251*. Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.415 by establishing tolerances for the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on the commodities dried hops at 20.0 ppm and fresh or green hops at 10.0 ppm. The proposed analytical method for determining residues is phosphorous specific flame photometric gas chromatography.

Authority: 21 U.S.C. 346a.

Dated: May 17, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-12592 Filed 5-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59195, TSH-FRL 2840-5]

#### Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

**DATE:** Written comments by: June 10, 1985.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-59195]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

#### FOR FURTHER INFORMATION CONTACT:

Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-46

*Close of Review Period:* June 27, 1985.

*Manufacturer:* Confidential.

*Chemical:* (S) Phosphorodithioic acid, O,O-dihexyl ester.

*Use:* (G) Destructive use-intermediate. Prod. range: 7,300 kg-one year.

*Toxicity Data:* No data submitted.

*Exposure:* Manufacturer: Dermal, a total of 5 workers.

*Environmental Release/Disposal:* 1 kg process sample, released disposal by resource conservation and Recovery Act (RCRA), approved landfill and deep well.

T 85-47

*Close of Review Period:* June 27, 1985.

*Import:* Confidential.

*Chemical:* (G) Alkyl polyoxy ethyl ether.

*Use Import:* (G) Detergent for scouring polyester/cotton fabrics in textile mills. Import range: Confidential.

*Toxicity Data:* No data submitted.

*Exposure:* Confidential.

*Environmental Release/Disposal:* Confidential.

T 85-48

*Close of Review Period:* June 28, 1985.

*Manufacturer:* Sohio Engineered Materials Company.

*Chemical:* Aluminum arsenate.

*Use:* (S) Used as an alternate arsenic source for the controlled doping of silicon wafers in the manufacture of integrated circuits. Prod. range: < 500 lbs-24 mos.

*Toxicity Data:* No data submitted.

*Exposure:* Manufacturer, disposal: dermal, a total of 2 workers.

*Environmental Release/Disposal:* No data submitted.

T 85-49

*Close of Review Period:* June 28, 1985.

*Manufacturer:* Sohio Engineered Materials Company.

*Chemical:* Yttrium arsenate.

*Use:* (S) Used as an alternate source for the controlled doping of silicon wafers in the manufacture integrated circuits. Prod. range: < 500 lbs-24 mos.

*Toxicity Data:* No data submitted.

*Exposure:* Manufacturer: disposal: Dermal, a total of 2 workers.

*Environmental Release/Disposal:* No data submitted.

Dated: May 20, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85-12595 Filed 5-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59715; SH-FRL 2840-6]

#### Polyester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5 (a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46666) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and Provides a summary of it.

**DATES:** Close of Review Period:

Y 85-71—June 4, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

## Y 85-71

*Import:* Confidential.

*Chemical:* (G) Polyester.

*Use Import:* (S) Industrial and commercial surface coatings for molded parts and wood. Import range: 21,600–86,400 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Import, processing, use: Dermal, a total of 20 workers/four sites. *Environmental Release/Disposal.* No data submitted.

Dated: May 20, 1985.

V. Paul Fuschini,  
Acting Director, Information Management  
Division.

[FR Doc. 85-12593 Filed 5-23-85; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Project No. 8069-001]

United Hydro Partners; Surrender of  
Preliminary Permit

May 20, 1985.

Take notice that United Hydro Partners, Permittee for the proposed Mississippi River Lock and Dam No. 9 Hydro Project No. 8069, has requested that its preliminary permit be terminated. The permit was issued on April 16, 1984, and would have expired July 31, 1986. The project would have been located on the Mississippi River near Seneca, Alamakee County, Iowa. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on May 3, 1985, and the preliminary permit for Project No. 8069 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-12644 Filed 5-23-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION  
AGENCY

[ER-FRL-2840-3]

Environmental Impact Statements and  
Regulations; Availability of EPA  
Comments

Availability of EPA comments prepared May 6, 1985 through May 10, 1985 pursuant to the Environmental Review Process (ERP), under section 309

of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the *Federal Register* dated October 19, 1984 (49 FR 41108).

## Draft EISs

ERP No. DS-BLM-A01054-00, Rating EC2, Federal Coal Mgmt. Program, Continuation or Implementation of a New Program, MT, ND, WY, CO, UT, NM, AL. *Summary:* EPA expressed concerns that the draft supplement did not fully establish the linkage between the programmatic document and subsequent tiered analyses and does not fully assess the role which related program initiatives (such as those in Table 1-6 and in the Unsuitability Criteria) play in ensuring that the program is environmentally acceptable.

ERP No. D-COE-G36127-00, Rating LO, Slidell—Pearlington Flood Control Plan, Pearl River Basin, Pearl River, LA and MS. *Summary:* EPA has not identified any potential environmental impacts requiring changes to the proposal. However, we are suggesting the inclusion of specific non-structural measures to strengthen and supplement the overall flood reduction benefits.

ERP No. D-MMS-K03013-CA, Rating EU2, Pt. Pedernales Field Offshore Oil and Gas OCS Development Projects, Central Santa Barbara Basin, CA. *Summary:* EPA based their assigned rating on several key factors: (1) Significant potential increases in onshore ozone and sulfur dioxide levels resulting in violations of federal air quality standards, with even more substantial ozone impacts due to cumulative development scenarios; (2) other reasonable alternatives were inadequately explored, including phased development; (3) impacts of marine discharges upon marine ecosystems were uncertain, especially heavy metals in drilling muds; (4) a comprehensive monitoring program is needed to determine the impacts of drilling cuttings and fluids on marine environments; and (5) a plan was needed to mitigate onshore impacts on wetland habitats and sensitive species.

ERP No. D-SCS-G36126-LA, Rating LO, W. Franklin Watershed Multipurpose Plan, LA. *Summary:* EPA has not identified any potential environmental impacts requiring changes to the proposal. EPA supports the mitigation proposed and concurs that it be made part of the preferred action.

## Final EISs

ERP No. F-AFS-L61163-OR, Willamette Pass Alpine Winter Sports Site Expansion and Development, Master Plan, Deschutes and Willamette Nat'l Forests, OR. *Summary:* The FEIS was generally responsive to EPA's comments on the DEIS. EPA has no objections to implementation of the program as proposed. EPA made no formal comments.

ERP No. F-CGD-L50003-WA, Duwamish River Bridges, Construction, Permit, WA. *Summary:* EPA has concerns about the potential impacts to wetlands from construction activities. We requested that the proposed mitigation be included in the USCG permit. This would ensure an improved wetland habitat in the area. In order to assure applicant commitment to the mitigation proposed for the wetland impacts at the Black River crossing, EPA suggested that mitigation conditions be included in the Coast Guard Bridge Permit.

ERP No. F-COE-E30027-FL, Sarasota and Manatee Counties Beach Erosion and Storm Protection Plan, FL. *Summary:* EPA suggests that certain ramifications of the proposed action are not sufficiently explored in the document. The document discusses additional development when elaborating on the benefits of the proposed project. EPA believes, therefore, that the assessment of this and future proposals of this nature would be improved if some of the potential long-term economic and societal consequences attendant to pumping sand on a retreating shoreline would be considered.

ERP No. F-COE-E35072-AL, Theodore Ship Channel, Bulk Coal and Grain Handling Facility Construction, Permit Mobile Bay, AL. *Summary:* EPA believes the revised treatment plan for the coal storage area appears competent to deal with most point and non-point discharges from this part of the operation. Nevertheless, there are still some additional improvements which must be made there to maintain state water quality standards in the discharge streams. The latest mitigation proposal is inadequate in its areal extent and of doubtful efficacy, design-wise, to create an equivalent functional wetland similar to that lost at the project site. As soon as a reasonable mitigation plan is offered for review, we will give it our highest priority for evaluation.

ERP No. F-COE-G39018-00, Pontchartrain Basin and Mississippi Sound Freshwater, Estuarine Areas, MS and LA. *Summary:* The FEIS adequately

responds to EPA's comments issued on the DEIS and EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. F-FHW-E40528-AL, Talladega Scenic Drive Completion, Bulls Gap to Piedmont, Talladega Nat'l Forest, AL. *Summary:* EPA is concerned that the FEIS lacks a commitment to implement water quality mitigation measures. In addition, it was suggested that clarification be obtained from the Corps of Engineers regarding 404 jurisdiction.

ERP No. F-FHW-E40589-KY, US 27/ Nicholasville Bypass Construction, KY. *Summary:* EPA expressed concern regarding the water quality and secondary development impacts that are associated with the proposed alignment. It was suggested that due to the reduced environmental impacts that the Central Street on Inner-East alternatives be reconsidered. EPA requested that additional coordination take place to resolve the issues.

ERP No. F-FHW-F40093-MI, US 27 Freeway Construction, Lansing to Ithaca, MI. *Summary:* EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F-MMS-A02205-AK, 1985 St. Georges Basin OCS Oil and Gas Sale No. 89, Lease Offering, Bering Sea, Offshore AK. *Summary:* EPA believes that the high value and extreme sensitivity of the biological resources of the St. George planning area require special protection. The adverse effects on these resources and their habitats from oil spills suggests that unacceptable environmental consequences could very likely occur if the proposed action in the FEIS proceeds unaltered. EPA recommends reconfiguring the sale area to delete tracts within 50 miles of the Pribilof Islands and Unimak Pass and 25 miles of the Aleutian Islands (Alt. III, IV and VI). EPA also recommends adopting protective biological stipulations and a transportation stipulation addition to avoid an oil and gas terminal in the Pribilof Islands.

ERP No. F-SFW-L84024-AK, Kenai Nat'l Wildlife Refuge, Conservation Mgmt. Plan, AK. *Summary:* EPA made no formal comments. EPA reviewed the FEIS and has no objections to implementation of the preferred alternative as proposed.

Dated: May 21, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.  
[FR Doc. 85-12856 Filed 5-23-85; 8:45 am]  
BILLING CODE 6560-50-M

[ER-FRL-2840-3]

#### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed May 13, 1985 Through May 17, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850201, Draft, COE, CA, Lower San Joaquin River and Tributaries Flood Control Project, Channel Clearing, Modifications, Due: July 10, 1985, Contact: Mike Welsh (916) 440-2458.

EIS No. 850202, Final, COE, HI, Hilo Bayfront Beach Improvement and Highway Protection, Hawaii County, Due: June 24, 1985, Contact: Dr. James Maragos (808) 438-2263.

EIS No. 850203, Final, NRC, WA, Washington Public Power Supply System (WPPSS) Nuclear No. 3, Operating License, Grays Harbor County, Due: June 24, 1985, Contact: Braj Singh (301) 492-8423.

EIS No. 850204, Final, AFS, CO, Oh-Be-Joyful Wilderness Study Area, Grand Mesa, Uncompahgre, and Gunnison National Forests, Gunnison County, Due: June 24, 1985, Contact: Ray Evans (303) 874-7691.

EIS No. 850205, Draft, COE, FL, Palm Beach County, Beach Erosion Control Project, Palm Beach County, Due: July 8, 1985, Contact: Paul Schmidt (904) 791-2202.

EIS No. 850206, Draft, NPS, AZ, NV, Lake Mead National Recreation Area, General Management Plan, Improvement, Mohave County, AZ and Clark County, NV, Due: July 31, 1985, Contact: Jerry Wagers (702) 293-4041.

EIS No. 850207, DSUPL, USA, PRO, IN, AR, Binary Chemical Munitions Program, Newport Army Ammunition Plant or Vertac Chemical Plant, Vermillion County, IN and Phillips County, AR, Due: July 8, 1985, Contact: W.E. Miller (202) 697-5752.

EIS No. 850208, Final, USN, AZ, Joint Guayule Rubber Program, Agricultural Operations, Gila River Indian Reservation, Maricopa and Pinal Counties, Due: June 24, 1985, Contact: Paul Hubai (202) 692-4313.

EIS No. 850209, Final, USN, NV, Fallon Naval Air Station, Supersonic Operations Area, Designation and Strike Warfare Center, Establishment, Due: June 24, 1985, Contact: Dana Sokamoto (415) 877-5773.

EIS No. 850210, Draft, DEA, PRO, United States and Hawaii Non-Federal and Indian Lands, Cannabis Eradication

Program, Due: July 8, 1985, Contact: Rodolfo Ramirez, Jr. (202) 633-5628.

#### Amended Notices

EIS No. 850193, Final, SFW, AK, Becharof National Wildlife Refuge Comprehensive Conservation Plan, Designation, Due: June 28, 1985, Published FR 5-10-85—Review extended.

EIS No. 830584, Final, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Published FR 11-10-83—Officially Withdrawn.

Dated: May 21, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.  
[FR Doc. 85-12657 Filed 5-23-85; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-5-MN-2]

#### The Minnesota Radiological Emergency Response Plan Site-Specific for the Monticello Nuclear Power Plant

**ACTION:** Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Minnesota submitted its plans relating to the Monticello Nuclear Power Plant to the Director of FEMA Region V on March 12, 1981, for FEMA review and approval. On January 28, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Monticello facility, and evaluations of the joint exercises conducted on January 7, 1981, March 2, 1982, and February 23, 1983, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on January 8, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Monticello Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they

provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The public alert and notification (A&N) system was approved by FEMA on April 25, 1985 in accordance with the joint Nuclear Regulatory Commission (NRC)/FEMA criteria in NUREG-0654/FEMA-REP-1, Rev. 1, Appendix 3 and FEMA-43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the Monticello Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-5-MN-2 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: May 20, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

*Associate Director, State and Local Programs and Support.*

[FR Doc. 85-12551 Filed 5-23-85; 8:45 am]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-5-WI-1]

#### **The Wisconsin Radiological Emergency Response Plans Site-Specific for the LaCrosse Nuclear Power Plant**

**ACTION:** Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Wisconsin submitted its plans relating to the LaCrosse Nuclear Power Plant to the Director of FEMA Region V on April 4, 1984, for FEMA review and approval. On August 30, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the LaCrosse facility, and evaluations of the joint exercises conducted on October 21, 1981, August 3, 1982, and June 19, 1984, in which the State demonstrated its capability to implement its revised plan dated August 1983, in accordance with § 350.9 of the FEMA rule. A report of the public meeting held on November 10, 1981, to discuss the site-specific aspects of the State and local plans in

accordance with § 350.10 of the FEMA rule was also included.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the LaCrosse Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG-0654/FEMA-REP-1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the LaCrosse Nuclear Plant in accordance with section 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-5-WI-1 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: May 20, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

*Associate Director, State and Local Programs and Support.*

[FR Doc. 85-12549 Filed 5-23-85; 8:45 am.]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-5-WI-4]

#### **The Wisconsin Radiological Emergency Response Plans Site-Specific for the Prairie Island Nuclear Power Plant**

**ACTION:** Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Wisconsin submitted its plans relating to the Prairie Island Nuclear Power Plant to the Director of FEMA Region V on April 6, 1981, for FEMA review and approval. On September 20, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans

around the Prairie Island facility, and evaluations of the joint exercises conducted on October 14, 1980, December 8, 1981, October 14, 1982, March 13, 1984 and June 19, 1984 (full participation by the State in the LaCrosse exercise) in accordance with § 350.9 of the FEMA rule. A report of the public meeting held on October 16, 1980, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule was also included.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Prairie Island Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The public alert and notification system was approved by FEMA on April 25, 1985 in accordance with the joint Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG-0654/FEMA-REP-1, Revision 1, Appendix 3 and FEMA-43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the Prairie Island Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-5-WI-4 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: May 20, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

*Associate Director, State and Local Programs and Support.*

[FR Doc. 85-12550 Filed 5-23-85; 8:45 am]

BILLING CODE 6718-01-M

#### **FEDERAL MARITIME COMMISSION**

[Agreement No. 224-003981-003]

**Agreement Between the Board of Trustees of the Galveston Wharves (GW); and Galport Terminal, Inc. (Galport); Erratum**

The Federal Register Notice published on May 9, 1985, [Vol. 50, No. 90, Pg.

19581), covering Agreement No. 224-003981-003, incorrectly stated that James J. Flannagan Shipping Corporation (JJFSC) is being added as a participating party to the agreement. Rather, it should have stated that the parties intend that an arrangement will be worked out to allow for their participation.

Dated: May 21, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-12581 Filed 5-23-85; 8:45 am]

BILLING CODE 6730-01-M

### Redelegation of Authority; Dissolution of Tariff Compliance Review Board

Section 9 of Commission Order 1 (Revised), effective November 12, 1981, delegates specific authority to the Director, Bureau of Tariffs. Section 6.03 of Commission Order 1 provides that such authority may be redelegated to subordinate personnel under the direction of the Director, Bureau of Tariffs.

Section 9.01 of Commission Order 1 delegates the following authority to the Director, Bureau of Tariffs:

9.01 Authority, except as provided in subsection 9.02 of this Order with respect to a controlled carrier subject to the Ocean Shipping Act of 1978 (Pub. L. 95-483), to approve or disapprove Special Permission applications submitted by domestic offshore carriers or carriers in the foreign commerce of the United States, or conferences of such carriers, for relief from statutory and/or Commission tariff requirements.

Furthermore, section 9.05 of Commission Order 1 delegates the following authority to the Director, Bureau of Tariffs:

9.05 Authority to accept or reject tariff filings of common carriers in the foreign and domestic offshore commerce of the United States or conferences of such carriers for failure to meet the requirements of the statutes of the Commission, for lack of completeness and clarity of the rules and regulations governing the tariffs, or noncompliance with special permission or other orders of the Commission.

By Order published in the *Federal Register* on July 15, 1983 (48 FR 32388) the Director, Bureau of Tariffs delegated the authority contained in sections 9.01 and 9.05 of Commission Order 1 to a Tariff Compliance Review Board within the Bureau of Tariffs. The authority so delegated to the Tariff Compliance Review Board is hereby rescinded and the Board abolished. This authority is redelegated to the Chief, Office of

Foreign Tariffs and the Chiefs of Divisions I and II, Office of Foreign Tariffs as follows:

Pursuant to the provisions of section 6.03 of Commission Order 1, and subject to the limitations contained in sections 6.02, 6.04 and 6.05 of that Order, I hereby delegate the authority contained in section 9.01 of Commission Order 1 to the Chief Office of Foreign Tariffs, Bureau of Tariffs, and the authority contained in section 9.05 of Commission Order 1 to the Chiefs, Division I and II of the Office of Foreign Tariffs, Bureau of Tariffs.

This delegation of authority and the dissolution of the Tariff Compliance Review Board is effective immediately.

Robert G. Drew,

Director, Bureau of Tariffs.

May 20, 1985.

[FR Doc. 85-12531 Filed 5-23-85; 8:45 am]

BILLING CODE 6730-01-M

### FEDERAL RESERVE SYSTEM

#### The Chase Manhattan Corp.; Proposed Acquisition of Bank

The Chase Manhattan Corporation has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting securities of Chase Bank of Ohio, Mentor, Ohio, a state chartered bank. Chase Bank is the successor in interest by merger of Chase Savings Bank of Ohio, Mentor, Ohio, of Chase Savings Bank (Federated) in Ohio, Cincinnati, Ohio, and of the following four state chartered savings and loan associations: The American Savings and Loan Company and The Tri-State Savings & Loan Association, both located in Cincinnati, Ohio; as well as Investor Savings Bank and First State Savings and Loan Association, both located in Columbus, Ohio.

Interested persons may express their views in writing on this proposal. Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Ohio Superintendent of Savings and Loan Associations and the Ohio Superintendent of Banks have requested that the Board act expeditiously in this matter under the provisions of § 225.14(h)(2) of the Board's Regulation Y (12 CFR 225.14(h)(2)). Accordingly, a shortened comment period is reasonable and appropriate in this case. Comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on

Thursday, May 30, 1985. This application is available for inspection at the offices of the Board of Governors and at the Federal Reserve Banks of New York and Cleveland.

In connection with this application, Applicant also has applied on behalf of Chase Bank for approval under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and § 208.4 of Regulation H (12 CFR 208.4) for membership in the Federal Reserve Systems.

Board of Governors of the Federal Reserve System, May 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-12784 Filed 5-23-85; 8:52 am]

BILLING CODE 6210-01-M

### FEDERAL TRADE COMMISSION

#### Cement Industry; Rescission of Enforcement Policy With Respect to Vertical Mergers in the Cement Industry

The Federal Trade Commission hereby rescinds its "Enforcement Policy With Respect to Vertical Mergers in the Cement Industry." This action was taken by unanimous vote of the Commission following an analysis of current conditions in the cement industry and a general re-evaluation of the Commission's merger enforcement policies.

The Commission originally issued its "Enforcement Policy With Respect to Vertical Mergers in the Cement Industry" in 1967 as one of a series of Commission policy statements designed to advise businesses in particular industries of those kinds of mergers which the Commission felt would be most likely to raise antitrust enforcement concerns. At that time, the Commission had found that a wave of vertical mergers and acquisitions threatened to have substantial adverse effects on competition in the cement industry, particularly in urban markets. This finding was based upon the Commission's merger enforcement experience in the cement industry, prior merger and acquisition cases involving the industry, a detailed industry-wide investigation,<sup>1</sup> and public hearings which the Commission held in July, 1966.

Upon implementation of the enforcement policy, the merger trend of concern subsided. In addition, other changes in industry and general business conditions since that time, and

<sup>1</sup> This investigation culminated in a published staff report, "Mergers and Vertical Integration in the Cement Industry."

refinements in the economic and antitrust analysis of vertical mergers, have convinced the Commission that the existing merger enforcement policy for the cement industry is no longer necessary or appropriate. The Commission previously ceased collecting special pre-merger reports for the cement industry in October, 1977. As part of its continuing effort to reduce unneeded regulation, the Commission now formally rescinds its merger enforcement policy for the cement industry.

The Commission cautions that its decision should not be interpreted to mean that future mergers in the cement industry will not be scrutinized for anticompetitive effects. To the contrary, mergers in this industry will continue to undergo as careful an evaluation as mergers in any other segment of the economy. Indeed, current Commission procedures, in particular the pre-merger reporting program established pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976,<sup>1</sup> ensure that virtually all mergers in the cement industry presenting significant antitrust problems will come to the attention of the Commission. In reviewing those mergers, however, the Commission believes that its current general merger enforcement policy, set forth in the *Statement of Federal Trade Commission Concerning Horizontal Mergers*,<sup>2</sup> issued June 14, 1982, provides a more appropriate and economically sensitive standard of evaluation than the 1967 enforcement policy for the cement industry.

To ensure that this action does not cause uncertainty, the Commission notes that it will continue to provide advisory opinions, as provided by its rules or practice, regarding the legality of particular mergers. The Commission invites those contemplating mergers to avail themselves of this program in any situation where there are questions regarding the legality of a prospective merger.

By direction of the Commission, dated February 6, 1985.  
Emily H. Rock,  
Secretary.  
[FR Doc. 85-12546 Filed 5-23-85; 8:45 am]  
BILLING CODE 6750-01-M

#### Food Distribution Industries; Rescission of Enforcement Policy With Respect to Mergers in the Food Distribution Industries

The Federal Trade Commission hereby rescinds its "Enforcement Policy with Respect to Mergers in the Food Distribution Industries" and discontinues the grocery premerger reporting program. The decision to rescind the enforcement policy was taken by unanimous vote of the Commission, and the decision to discontinue the reporting program was taken by a majority vote, with Commissioner Bailey and former Commissioner Pertschuk having dissented. The Commission's decisions followed an analysis of current conditions in the food distribution industries and a general reevaluation of the Commission's merger enforcement policies.

The Federal Trade Commission originally issued its "Enforcement Policy with Respect to Mergers in the Food Distribution Industries" in 1967 as one of a series of Commission policy statements designed to advise businesses in particular industries of those kinds of mergers which the Commission felt would be most likely to raise antitrust enforcement concerns. At that time, the Commission had found that mergers involving nationwide supermarket chains were in large part responsible for an accelerating trend toward increased concentration in food retailing, and that this trend threatened to have adverse competitive effects on the structure and behavior of the food distribution industries. This conclusion was based on the Commission's experience in cases involving the food distribution industries; a survey of leading food distributors; and studies by several authoritative sources, including the National Commission on Food Marketing. Changes in industry and general business conditions since that time, however, and refinements in the economic and antitrust analysis of mergers, have convinced the Commission that the existing merger enforcement policy for the food distribution industries no longer is necessary or appropriate. Accordingly, as part of its continuing effort to eliminate unneeded regulation, the Commission is rescinding that policy and is discontinuing the grocery premerger reporting program.

The Commission cautions that its decision should not be interpreted to mean that future mergers in the food distribution industries will not be scrutinized for anticompetitive effects. To the contrary, mergers in this sector of

the economy will continue to undergo as careful an evaluation process as mergers in any other segment of the economy. Current Commission procedures, in particular those established pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976,<sup>1</sup> ensure that virtually all mergers in the food distribution industries presenting significant antitrust problems will come to the attention of the Commission. In reviewing those mergers, however, the Commission believes that its current general merger enforcement policy, set forth in the *Statement of the Federal Trade Commission Concerning Horizontal Mergers*,<sup>2</sup> issued June 14, 1982, provides a more appropriate and economically sensitive standard of evaluation than the 1967 enforcement policy.

To ensure that this action will not cause uncertainty, the Commission notes that it will continue to provide advisory opinions, as provided by its rules or practice, regarding the legality of particular mergers. The Commission invites those contemplating mergers to avail themselves of this program in any situation where they have questions regarding the legality of a prospective merger.

By direction of the Commission, dated February 6, 1985.  
Emily H. Rock,  
Secretary.  
[FR Doc. 85-12545 Filed 5-23-85; 8:45 am]  
BILLING CODE 6750-01-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of the Secretary

##### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 17, 1985.

##### Social Security Administration

Subject: Refugee Resettlement-State  
Estimate Form—Revision (0960-0298)  
Respondents: States  
OMB Desk Officer: Judy A. McIntosh

<sup>1</sup> 15 U.S.C. 18a.

<sup>2</sup> CCH Trade Reg. Rep. section 451ff.

<sup>1</sup> 15 U.S.C. 18a.

<sup>2</sup> CCH Trade Reg. Rep. section 451ff.

**Health Care Financing Administration**

**Subject:** Provider Reimbursement Manual Sections 2721, 2722, and 2725, Requests for Exception to End Stage Renal Disease Composite Rates—(HCFA-9044)—Reinstatement (0938-0296)

**Respondents:** Businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations

**Subject:** Outpatient Rehabilitation Provider Cost Report—(HCFA-2088)—Extension (0938-0037)

**Respondents:** State/local governments, businesses or other for-profit institutions

**Subject:** Information Collection Requirements in 42 CFR 447.53(e) Imposition of Cost Sharing Charges Under Medicaid (Berc-509)—(HCFA-R-53)—Existing Collection

**Respondents:** Medicaid state agencies OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Date: May 20, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-12552 Filed 5-23-85; 8:45 am]

BILLING CODE 4150-04-M

**Food and Drug Administration****Advisory Committee Meeting; Cancellation**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is cancelling the meeting of the Science Advisory Board to the National Center for Toxicological Research scheduled for May 30 and 31. The meeting was announced by notice in the Federal Register of April 19, 1985 (50 FR 15640).

**FOR FURTHER INFORMATION CONTACT:** Ronald F. Coene, National Center for Toxicological Research (HFT-2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

Dated: May 16, 1985.

Mervin H. Shumate,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 85-12534 Filed 5-21-85; 11:38 am]

BILLING CODE 4160-01-M

[Docket No. 95E-0156]

**Determination of Regulatory Review Period for Purposes of Patent Extension; Tonocard Tablets****Correction**

In FR Doc. 85-1136 beginning on page 19809 in the issue of Friday, May 10, 1985, make the following correction: On page 19810, in the first column, in the third complete paragraph, in the fifth line, "1983" should read "1973".

BILLING CODE 1596-01-M

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[AA-6705-A2]

**Alaska Native Claims Selection**

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Togiak Natives Limited for approximately 5,725 acres. The lands involved are in the vicinity of Togiak.

Seward Meridian, Alaska (Unsurveyed)

T. 11 S., R. 67 W.

T. 13 S., R. 69 W.

T. 15 S., R. 69 W.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until June 24, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E

(1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,  
Section Chief, Branch of ANCSA  
Adjudication.

[FR Doc. 85-12603 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-JA-M

[AA-11130]

**Alaska Native Claims Selection**

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Point Possession, Inc., notice of which was published in the Federal Register, Vol. 50, No. 83, pg. 18319 on April 30, 1985, is modified by adding the provision that the conveyance will be subject to Sec. 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1621(g).

Upon issuance, the modified DIC will be published once a week for four (4) consecutive weeks in the ANCHORAGE DAILY NEWS. Copies of the modified DIC can be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming property interest which is adversely affected by the decision shall have until June 24, 1985, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given April 30, 1985, is final.

Olivia Short,  
Section Chief, Branch of ANCSA  
Adjudication.

[FR Doc. 85-12604 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-JA-M

[I-21106]

**Public Land Exchange; Oneida County, ID**

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Realty Action, I-21106—Exchange of Public and Private Lands in Oneida County, Idaho.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716:

Boise Meridian

T. 16 S., R. 30 E.,

Sec. 16, W $\frac{1}{2}$ NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ .

Comprising 240 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from H. Sanford Campbell, Juniper, Idaho:

Boise Meridian

T. 16 S., R. 30 E.,

Sec. 16, SW $\frac{1}{4}$ .

Comprising 160 acres of private lands. Included with these lands is a water well and pump serviced by an electric power line.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for livestock grazing and for a water source for both livestock and wildlife. The consolidation of public lands will improve the efficiency of resource management in the area. The public interest will be served by completing the exchange.

The appraised values of the lands to be exchanged are equal.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way thereon for ditches and canals constructed by the United States under authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Publication of this notice segregates the public lands from appropriation under the public land laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent, upon publication in the *Federal Register* of a termination of the segregation, or 2 years from the date of its publication, whichever occurs first.

Further information concerning the exchange, including the Environmental Assessment is available for review at the Burley District Office, 200 South Oakley Highway, Burley, Idaho.

For a period of 45 days from the date of first publication, interested parties may submit comments to: Terrance M. Costello, Deep Creek Area Manager, Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318. Objections will be reviewed by the State Director who may sustain, vacate, or

modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 16, 1985.

John S. Davis,  
District Manager.

[FR Doc. 85-12628 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-22-M

### Realty Action; Exchange of Public Lands in Boundary County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Realty Action—Exchange Public Lands in Boundary County, Idaho.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of October 21, 1976*, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 61 N., R. 1 E.,

Sec. 6, SE $\frac{1}{4}$ NW $\frac{1}{4}$  containing 40.00 acres more or less and with an appraised value of \$47,600.00.

In exchange for these lands, the United States will acquire the following described lands from Wesley W. Hubbard & Sons, Inc. of Bonners Ferry, Idaho:

T. 62 N., R. 1 W.,

Sec. 25, W $\frac{1}{2}$ SW $\frac{1}{4}$  containing 80.00 acres more or less and with an appraised value of \$45,800.00.

The purpose of the exchange is to acquire the non-federal lands that have equal or greater long-term resource productivity that adjoin other federal lands presently administered by the U.S. Forest Service and the Kootenai National Wildlife Refuge. The exchange is consistent with the Emerald Empire Management Framework Plan Amendment and the public interest will be well served.

Wesley W. Hubbard and Sons, Inc. will make a payment of \$1,800.00 to equalize the value of these lands.

Lands to be transferred from the United States will be subject to the following reservation:

1. A right-of-way for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

The private lands to be acquired by the United States will not be subject to any reservations.

The publication of this Notice will

segregate the subject lands from all appropriations under the public land laws including the mining laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Comments: Detailed information concerning this exchange can be obtained from the Coeur d'Alene District Office, 1808 North Third, Coeur d'Alene, ID 83814. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Dated: May 17, 1985.

Wayne Zinne,  
District Manager

[FR Doc. 85-12626 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-66-M

### Road Closure; King Range National Conservation Area, Ukiah District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Road Closure.

**SUMMARY:** Pursuant to 43 CFR 8364.1 the Bureau of Land Management is closing the Spanish Ridge Road within the King Range National Conservation Area (KRNCA) to protect people and property from hazardous conditions. The road closure is an emergency measure which will continue in effect until vehicle route designations for the KRNCA are completed. Vehicle use on Spanish Ridge Road will be prohibited except for administrative and emergency use, and use by grazing lessees operating the Spanish Flat Allotment.

**DATES:** Closure is effective May 27, 1985.

#### FOR FURTHER INFORMATION CONTACT:

John Lloyd, Arcata Resource Area Manager, P.O. Box 11, Arcata, California 95521, Telephone (707) 822-7648.

Dated: May 17, 1985.

Van W. Manning,  
District Manager.

[FR Doc. 85-12498 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-84-M

## Fish and Wildlife Service

Togiak National Wildlife Refuge  
Comprehensive Conservation Plan/  
Environmental Impact Statement and  
Wilderness Review; Alaska

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of availability and public  
hearings.

**SUMMARY:** The U.S. Fish and Wildlife Service has prepared for public review a draft comprehensive conservation plan, wilderness review, and environmental impact statement (CCP/EIS) for the Togiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes five strategies for long-term management of the 4.3 million-acre refuge. Lands suitable for wilderness designation are identified in every alternative; each proposes specific acreages to be added to the National Wilderness Preservation System. At present, approximately 53 per cent of the Refuge is the Wilderness Preservation System.

**DATES:** Comments on the draft CCP/EIS must be submitted on or before August 23, 1985, to receive consideration in the preparation of the final CCP/EIS.

One formal public hearing and seven public meetings will be held as scheduled below to receive comments on the draft CCP/EIS:

Date	Time	Place
Public Hearing: July 9, 1985	7:30 p.m.	Central Junior High School, 1405 "E" St., Anchorage, Alaska.
Public Meetings: June 7, 1985	7:00 p.m.	Dillingham, a Senior Citizens' Center.
June 8, 1985	1:00 p.m.	Quinhagak, City Hall, Togiak, Community Hall (incl. Twin Hills residents).
June 10, 1985	1:00 p.m.	Igushik (fish camp).
June 11, 1985	1:00 p.m.	Goodnews Bay, Community Ctr.
June 12, 1985	1:00 p.m.	Platinum, City Bldg.

Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments will also be accepted at the public meetings. All comments and testimony, both oral and written, received prior to the above date will be considered in preparation of the final CCP/EIS.

**ADDRESS:** Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of it will be sent to all persons and organizations who participated in either the scoping and/or alternative workshops. Copies of the draft document are available upon request from Mr. William Knauer.

Copies of the draft CCP/EIS have been sent to all agencies that participated in the scoping process and to agencies and persons who have already requested copies. Those wishing to review the draft may obtain a copy by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Togiak National Wildlife Refuge Office, Dillingham, Alaska, and at the following locations:

- U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, D.C. 20240
- U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
- U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103
- U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
- U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell, Federal Building, 75 Spring Street, Atlanta, GA 30303
- U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
- U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225.

**SUPPLEMENTARY INFORMATION:** The draft CCP/EIS for the Togiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of Section 1317 of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include fish and wildlife management;

intensive human use in sensitive fish and wildlife habitats; loss of wilderness values; conflicts between non-local recreation users of the Refuge and local residents; commercial and sport harvest of fish; potential for reindeer grazing; oil and gas development; development and use of adjacent state and private lands; management of refuge inholdings; and lack of resource data. Overall goal of the plan is to afford maintenance of fish and wildlife populations in their present state while creating opportunities for hunting, fishing, and other recreational uses by balancing both guided-use levels and occasions for motorized and non-motorized boat use; intensive management in specific areas of the Refuge to allow for potential economic benefits.

The draft CCP/EIS describes five options for management of the Refuge, the process pursued in their development, and the environmental consequences of implementing each proposal. Alternative strategies are general in nature and provide broad proposals for management of refuge resources and uses. They range from one that would continue current management (Alternative A) to another which provides the opportunity for oil and gas exploration and development in designated areas (Alternative E). The proposal preferred by the Service (Alternative C) emphasizes protection of fish and wildlife populations and habitats and wilderness values, with special attention devoted to protection of the wildlife values in the Cape Peirce/Cape Newenham area. Both guided-use levels and opportunities for motorized and non-motorized boat use in the Togiak Wilderness would be balanced by the Service in this alternative; to implement Alternative C the Service would work with the established sport fishing/river guides.

The plan also describes the general wilderness suitability of differing acreages of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the October

29, 1981, Federal Register. Three public meetings were held during November 1981 in Togiak, Dillingham, and Quinhagak, Alaska. Several editions of a planning bulletin were sent to more than 500 persons and organizations. During August 24-25, 1982, a series of workshops was held in Anchorage to help define issues involving refuge resources. Two workshops were also held in Quinhagak and Goodnews Bay on October 15 and 16, 1984.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final EIS.

Dated: May 20, 1985.

David Olson,

Acting Regional Director.

[FR Doc. 85-12529 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Training and Qualifications of Personnel in Well-Control Training

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of approved well-control training schools.

**SUMMARY:** As published in the Federal Register (43 FR 59551) December 21, 1978, the Minerals Management Service (MMS) is providing, for public information, a current list of MMS approved well-control schools.

**FOR FURTHER INFORMATION CONTACT:** Mr. B.J. Shoger, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 860-7500.

**SUPPLEMENTARY INFORMATION:** On January 19, 1982, the MMS was established under Secretarial Order No.

3071. The Federal Register Notice (47 FR 7508) of February 19, 1982, published the MMSS-OCS-T 1 Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," Second Edition. The following is a list of MMS approved well-control schools:

### MMS Approved Well-Control Schools

#### Legend

#### Job Classification

RH—Rotary Helper

DM—Derrickman

DR—Driller

TP—Toolpusher

OR—Operator's Representative

Blowout-Preventer Stack Type

SUR—Surface BOP Stack

SUB—Subsea BOP Stack

### BASIC SCHOOLS

No. and school name	Type	Class	Approved	Expires	Comments
1. Alaska Vocational Technical Center	SUR SUB	DR TP OR	04-23-83	04-23-87	
2. Arco Oil and Gas Co.	SUR SUB	TP OR	12-10-84	12-10-88	
3. Basic Research and Training, Inc.	SUR SUB	DR TP OR	11-09-84	02-01-85	
4. Chevron U.S.A. Inc.	SUR SUB	DR TP OR	02-01-83	02-01-87	
5. Cities Service Co.	SUR SUB	OR	06-19-83	06-19-87	
6. Colorado Northwestern Community College	SUR SUB	DR TP OR	06-07-84	06-07-88	
7. Conoco, Inc.	SUR SUB	OR	11-01-82	11-01-86	
8. Cudd Pressure Control, Inc.	SUR SUB	DR TP OR	04-29-85	04-29-89	(1)
9. Delta-US Corp.	SUR SUB	DR TP OR	07-05-82	07-05-86	
10. Diamond M. Co.	SUR SUB	DR TP OR	05-31-83	05-31-87	
11. Doolin-Field Drilling Co.	SUR SUB	DR TP OR	04-30-85	04-30-89	
12. Dresser Industries/Magcober	SUR SUB	DR TP OR	06-27-83	06-27-87	
13. Drilco	SUR SUB	DR TP OR	12-07-84	12-07-88	
14. Exxon Co. U.S.A.	SUR SUB	DR TP OR	09-18-82	09-18-86	
15. Global Marine Drilling Co.	SUR SUB	DR TP OR	04-21-82	04-21-86	
16. Gulf Oil Exploration and Production Co.	SUR SUB	DR TP OR	09-12-83	09-12-87	
17. Houston Community College	SUR SUB	DR TP OR	09-18-83	09-18-87	(1)
18. Imco Services	SUR SUB	DR TP OR	07-06-82	07-06-86	
19. International Drilling Schools	SUR SUB	DR TP OR	11-10-82	11-10-86	
20. Keydrill Co.	SUR SUB	DR TP OR	05-29-84	05-29-88	
21. Lofland Brothers Co.	SUR	DR TP OR	01-24-84	01-24-88	
22. Louisiana State University	SUR SUB	DR TP OR	11-10-82	11-10-86	
23. Marlin Drilling Co., Inc.	SUR SUB	DR TP OR	07-01-84	07-01-88	
24. Maurer Engineering, Inc.	SUR SUB	DR TP OR	10-15-81	10-15-85	(1)
25. Michom, Inc.	SUR SUB	DR TP OR	01-18-83	01-18-87	
26. Murchison Drilling Schools	SUR SUB	DR TP OR	05-29-83	05-29-87	
27. NL Petroleum Services	SUR SUB	DR TP OR	07-02-83	07-02-87	
28. Northwestern Michigan College	SUR SUB	DR TP OR	02-04-85	02-04-89	
29. Ocean Drilling and Exploration Co.	SUR SUB	DR TP OR	05-29-83	05-29-87	
30. Odessa College	SUR SUB	DR TP OR	05-11-84	05-11-88	
31. Oilfield Training Consultants	SUR SUB	DR TP OR	06-13-84	06-13-88	
32. Oilfield Training Seminars Inc.	SUR SUB	DR TP OR	07-30-83	07-30-87	
33. Oklahoma Petroleum Training Corp.	SUR SUB	DR TP OR	07-31-84	07-31-88	
34. Parker Drilling Co.	SUR SUB	DR TP OR	10-29-84	10-29-88	
35. Pennsylvania State University	SUR SUB	DR TP OR	09-03-81	09-03-85	(1)
36. Pool Offshore Co.	SUR SUB	DR TP OR	11-20-83	11-20-87	(1)
37. Prentice and Records Enterprises, Inc.	SUR SUB	DR TP OR	05-07-83	05-07-87	
38. Prentice Training Co.	SUR SUB	DR TP OR	01-15-85	01-15-89	
39. Preston L. Moors, Inc.	SUR	TP OR	09-04-81	09-04-85	
40. Reading and Bates Drilling Co.	SUR SUB	DR TP OR	01-15-82	01-15-86	
41. Rike Service, Inc.	SUR SUB	DR TP OR	10-18-83	10-18-87	
42. Santa Fe Drilling Co.	SUR SUB	DR TP OR	04-08-85	04-08-89	(1)
43. Sedco Forex	SUR SUB	DR TP OR	02-01-82	02-01-86	
44. Shell Offshore Inc.	SUR SUB	DR TP OR	07-15-82	07-15-86	(1)
45. Shell Oil Co.	SUR SUB	DR TP OR	02-08-83	02-08-87	
46. Sohio Petroleum Co.	SUR SUB	DR TP OR	01-24-85	01-24-89	
47. Sturgis/Shellfield, Inc.	SUR SUB	DR TP OR	05-14-82	05-14-86	(1)
48. TDA Training, Inc.	SUR SUB	DR TP OR	04-06-82	04-06-86	
49. Texaco	SUR SUB	DR TP OR	02-15-83	02-15-87	
50. The Training Co., Inc.	SUR SUB	DR TP OR	01-06-83	01-06-87	
51. Triton Engineering Services	SUR SUB	OR	03-11-83	03-11-87	
52. Utah Basin Area Vocational Center	SUR SUB	DR TP OR	01-04-85	01-04-89	
53. Union Oil Co. of California	SUR SUB	DR TP OR	09-16-84	09-16-88	
54. University of Houston at Victoria	SUR SUB	DR TP OR	10-04-82	10-04-86	
55. University of Oklahoma	SUR SUB	DR TP OR	07-10-83	07-10-87	
56. University of Southwestern Louisiana	SUR SUB	DR TP OR	11-17-83	11-17-87	

## BASIC SCHOOLS—Continued

No. and school name	Type	Class	Approved	Expires	Comments
57. University of Texas (Petex)	SUR SUB	DR TP OR	05-08-83	05-08-87	
58. Ventura College	SUR SUB	DR TP OR	03-15-83	03-15-87	
59. Well Control School, Inc.	SUR SUB	DR TP OR	03-25-84	03-25-88	
60. Westec-Taft College	SUR SUB	DR TP OR	04-12-83	04-12-87	
61. Western Oceanic, Inc.	SUR SUB	DR TP OR	05-01-85	05-01-89	

## THE FOLLOWING SCHOOL'S BASIC WELL-CONTROL PROGRAMS HAVE EXPIRED

Amoco Production Co.	SUR SUB	OR	10-08-79	10-08-83	
Atlantic Pacific Marine Corp.	SUR SUB	DR TP OR	12-11-79	12-11-83	
Cape Cod Community College	SUR SUB	DR TP OR	02-09-81	02-09-85	
Digitran, Inc.	SUR SUB	DR TP OR	05-31-80	05-31-84	
Petroleum Training and Technical Services	SUR SUB	DR TP OR	04-29-79	04-29-83	
Rocky Mountain Well Control School	SUR SUB	DR TP OR	02-09-83	02-01-84	

## Comments:

\* Approval pending the results of onsite evaluation.

\* Subsea approval pending the results of onsite evaluation.

## REFRESHER SCHOOLS

No. and school name	Type	Class	Approved	Expires	Comments
1. Alaska Vocational Technical Center	SUR SUB	DR TP OR	04-23-83	04-23-87	
2. Amoco Production Co.	SUR SUB	OR	04-18-84	04-18-88	
3. Arco Oil and Gas Co.	SUR SUB	TP OR	12-10-84	12-10-88	
4. Basic Research and Training, Inc.	SUR SUB	DR TP OR	11-09-84	02-01-86	
5. Chevron U.S.A. Inc.	SUR SUB	DR TP OR	02-01-83	02-01-87	
6. Cities Service Co.	SUR SUB	OR	06-19-83	06-19-87	
7. Colorado Northwestern Community College	SUR SUB	DR TP OR	06-07-84	06-07-88	
8. Conoco, Inc.	SUR SUB	OR	11-01-82	11-01-86	
9. Cudd Pressure Control, Inc.	SUR SUB	DR TP OR	04-29-85	04-29-89	(1)
10. Delta-US Corp.	SUR SUB	DR TP OR	07-05-82	07-05-86	
11. Diamond M. Co.	SUR SUB	DR TP OR	05-31-83	05-31-87	
12. Oxylin-Field Drilling Co.	SUR SUB	DR TP OR	04-30-85	04-30-89	
13. Dresser Industries/Magcobar	SUR SUB	DR TP OR	08-27-83	08-27-87	
14. Drilco	SUR SUB	DR TP OR	12-07-84	12-07-88	
15. Global Marine Drilling Co.	SUR SUB	DR TP OR	04-21-82	04-21-86	
16. Gulf Oil Exploration and Production Co.	SUR SUB	DR TP OR	09-12-83	09-12-87	
17. Houston Community College	SUR SUB	DR TP OR	09-18-83	09-18-87	(1)
18. Imco Services	SUR SUB	DR TP OR	07-06-82	07-06-86	
19. International Drilling Schools	SUR SUB	DR TP OR	11-10-82	11-10-86	
20. Keydrill Co.	SUR SUB	DR TP OR	05-29-84	05-29-88	
21. Loffland Brothers Co.	SUR	DR TP OR	01-24-84	01-24-88	
22. Louisiana State University	SUR SUB	DR TP OR	11-10-82	11-10-86	
23. Martin Drilling Co., Inc.	SUR SUB	DR TP OR	07-01-84	07-01-88	
24. Maurer Engineering, Inc.	SUR SUB	DR TP OR	10-15-81	10-15-85	(1)
25. Michem, Inc.	SUR SUB	DR TP OR	01-18-83	01-18-87	
26. Murchison Drilling Schools	SUR SUB	DR TP OR	05-29-83	05-29-87	
27. NL Petroleum Services	SUR SUB	DR TP OR	07-02-83	07-02-87	
28. Northwestern Michigan College	SUR SUB	DR TP OR	02-04-85	02-04-89	
29. Ocean Drilling and Exploration Co.	SUR SUB	DR TP OR	05-29-83	05-29-87	
30. Odessa College	SUR SUB	DR TP OR	05-11-84	05-11-88	
31. Oilfield Training Consultants	SUR SUB	DR TP OR	06-13-84	06-13-88	
32. Oilfield Training Seminars Inc.	SUR SUB	DR TP OR	07-30-83	07-30-87	
33. Oklahoma Petroleum Training Corp.	SUR SUB	DR TP OR	07-31-84	07-31-88	
34. Parker Drilling Co.	SUR SUB	DR TP OR	10-29-84	10-29-88	
35. Pennsylvania State University	SUR SUB	DR TP OR	09-03-81	09-03-85	(1)
36. Pool Offshore Co.	SUR SUB	DR TP OR	11-20-83	11-20-87	(1)
37. Prentice and Records Enterprises, Inc.	SUR SUB	DR TP OR	05-07-83	05-07-87	
38. Prentice Training Co.	SUR SUB	DR TP OR	01-15-85	01-15-89	
39. Preston L. Moore, Inc.	SUR	TP OR	09-04-81	09-04-85	
40. Reading and Bates Drilling Co.	SUR SUB	DR TP OR	01-15-82	01-15-86	
41. Rike Service Inc.	SUR SUB	DR TP OR	10-16-83	10-16-87	
42. Santa Fe Drilling Co.	SUR SUB	DR TP OR	04-08-85	04-08-89	(1)
43. Sedco Forex	SUR SUB	DR TP OR	02-01-82	02-01-86	
44. Shell Offshore Inc.	SUR SUB	DR TP OR	07-15-82	07-15-86	(1)
45. Shell Oil Co.	SUR SUB	DR TP OR	02-08-83	02-08-87	
46. Sohio Petroleum Co.	SUR SUB	DR TP OR	01-24-85	01-24-89	
47. Sturgis/Sheffield, Inc.	SUR SUB	DR TP OR	07-26-82	07-26-86	(1)
48. TDA Products, Inc.	SUR SUB	DR TP OR	04-06-82	04-06-86	
49. Texaco	SUR SUB	DR TP OR	02-15-83	02-15-87	
50. The Training Co. Inc.	SUR SUB	DR TP OR	01-06-83	01-06-87	
51. Triton Engineering Services	SUR SUB	OR	07-02-84	07-02-88	
52. Utah Basin Area Vocational Center	SUR SUB	DR TP OR	01-04-85	01-04-89	
53. Union Oil Co. of California	SUR SUB	DR TP OR	09-16-84	09-16-88	
54. University of Houston at Victoria	SUR SUB	DR TP OR	10-04-82	10-04-86	
55. University of Oklahoma	SUR SUB	DR TP OR	07-10-83	07-10-87	
56. University of Southwestern Louisiana	SUR SUB	DR TP OR	11-17-83	11-17-87	
57. University of Texas (Petex)	SUR SUB	DR TP OR	05-08-83	05-08-87	
58. Ventura College	SUR SUB	DR TP OR	03-15-83	03-15-87	
59. Well Control School, Inc.	SUR SUB	DR TP OR	03-25-84	03-25-88	
60. Westec-Taft College	SUR SUB	DR TP OR	04-12-83	04-12-87	
61. Western Oceanic, Inc.	SUR SUB	DR TP OR	05-01-85	05-01-89	

## THE FOLLOWING SCHOOL'S REFRESHER WELL-CONTROL PROGRAMS HAVE EXPIRED

Atlantic Pacific Marine Corp.	SUR SUB	DR TP OR	12-11-79	12-11-83	Expired.
Cape Cod Community College	SUR SUB	DR TP OR	02-09-81	02-09-85	Expired.
Digitran, Inc.	SUR SUB	DR TP OR	05-31-80	05-31-84	Expired.

## REFRESHER SCHOOLS—Continued

No. and school name	Type	Class	Approved	Expires	Comments
Petroleum Training and Technical Services	SUR SUB	DR TP OR	12-06-79	12-06-83	Expired
Rocky Mountain Well Control School	SUR SUB	DR TP OR	02-08-83	02-01-84	Expired

## Comments:

\* Approval pending the results of onsite evaluation.

\* Subsea approval pending the results of onsite evaluation.

## ROTARY HELPER (RH) AND DERRICKMAN (DM) SCHOOLS

No. and school name	Class	Approved
1. Alaska United Drilling Co.	RH DM	10-26-83
2. Alaska Vocational Technical Center	RH DM	10-21-83
3. Anglo Alaska/Nabors Alaska	RH DM	01-07-82
4. Atlantic Pacific Marine Corp.	RH DM	12-11-79
5. Atwood Group, Inc.	RH DM	08-08-79
6. Atwood Oceanics, Inc.	RH DM	09-07-79
7. Bailey-Shannon Drilling	RH DM	11-16-81
8. Basic Research and Training, Inc.	RH DM	08-09-82
9. Botankamp Drilling Co.	RH DM	09-13-79
10. Booker Drilling	RH DM	01-10-80
11. Broughton Drilling	RH DM	01-18-80
12. Cactus International	RH DM	12-10-79
13. Challenger Drilling	RH DM	12-14-79
14. Chiles Drilling Co.	RH DM	05-14-79
15. Circle Bar Drilling	RH DM	01-24-80
16. Cyclops Drilling	RH DM	11-28-79
17. Dan-Tex International	RH DM	02-29-80
18. Diamond M. Co.	RH DM	03-01-79
19. Divlyn-Field Drilling Co.	RH DM	03-06-79
20. Dolphin-Titan International	RH DM	04-30-79
21. Dual Offshore Co.	RH DM	12-06-79
22. Fluor Drilling Service	RH DM	02-06-80
23. Fluor of California	RH DM	05-07-84
24. Global Marine Drilling Co.	RH DM	03-06-79
25. Goldrus Marine Drilling	RH DM	10-26-80
26. Griffin-Alexander Drilling	RH DM	08-26-80
27. Houston Offshore	RH DM	06-14-79
28. Houlich Energy	RH DM	01-28-82
29. Huthance Drilling Co.	RH DM	03-05-79
30. J.F.P. Drilling Co.	RH DM	07-02-80
31. Keydrill Co.	RH DM	10-17-79
32. Keyes Offshore	RH DM	11-01-79
33. Loffland Brothers Co.	RH DM	01-24-80
34. Marine Drilling Co.	RH DM	03-20-79
35. Marlin Drilling Co., Inc.	RH DM	06-14-79
36. Maurer Engineering, Inc.	RH DM	03-25-80
37. Mayronne Co.	RH DM	10-05-79
38. Moran Drilling Corp.	RH DM	03-25-80
39. Mudtech	RH DM	11-07-79
40. Nicklos Drilling	RH DM	10-30-79
41. Noble Drilling	RH DM	08-24-79
42. O and U Drilling	RH DM	08-20-79
43. Ocean Drilling and Exploration Co.	RH DM	10-16-79
44. Offfield Training Seminars	RH DM	03-07-85
45. Parker Drilling Co.	RH DM	07-02-84
46. Penrod Drilling	RH DM	07-18-79
47. Peter Bowden Drilling	RH DM	10-01-79
48. Phoenix Seadrill	RH DM	09-25-79
49. Pool Offshore Co.	RH DM	11-20-79
50. Prentice and Records Enterprises, Inc.	RH DM	02-15-79
51. Reading and Bates Drilling Co.	RH DM	05-19-78
52. Rowan Companies	RH DM	06-10-78
53. Salen Offshore Co.	RH DM	03-20-79
54. Santa Fe Drilling Co.	RH DM	03-11-80
55. Savage Drilling	RH DM	11-02-82
56. Scan Drilling Co.	RH DM	07-25-79
57. Sea Drilling	RH DM	11-28-79
58. Sedco Forex	RH DM	06-11-82
59. Services Equipment and Engineering, Inc.	RH DM	08-22-79
60. Shell California Production Inc.	RH DM	02-15-83
61. Shell Offshore Inc.	RH DM	07-16-82
62. Shell Oil Co.	RH DM	02-15-79
63. South Texas Offshore Drilling	RH DM	01-27-82
64. Teledyne Mobile Offshore	RH DM	05-09-79
65. Temple Drilling Co.	RH DM	10-15-79
66. The Offshore Co.	RH DM	06-16-79
67. Transworld Drilling	RH DM	04-11-79
68. Venture College	RH DM	03-06-84
69. Well Control School, Inc.	RH DM	09-05-84
70. Western Oceanic, Inc.	RH DM	03-01-79
71. Zapata Offshore Co.	RH DM	09-22-78

It is anticipated that periodic Notices of this type will be published in the future on an as needed basis.

Dated: May 6, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-12512 Filed 5-23-85; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

**Purpose of information collection:** The proposed information collection is for use by the Commission in connection with investigation No. 332-211, Competitive Assessment of the U.S. Ball and Roller Bearing Industry, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

#### Summary of proposal:

- (1) Number of forms submitted: three.
- (2) Title of form: Competitive Assessment of the U.S. Ball and Roller Bearing Industry—Questionnaire for Producers, Importers, and Purchasers.
- (3) Type of request: new.
- (4) Frequency of use: nonrecurring.
- (5) Description of respondents: Firms manufacturing, importing or purchasing ball and roller bearings in the United States.
- (6) Estimated number of respondents: 126.
- (7) Estimated total number of hours to complete the forms: 12,440.
- (8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in manner that would reveal the individual operations of a firm.

**Additional information or comment:** Copies of the proposed form and supporting documents may be obtained from David Slingerland (202-523-0263) or Carla Springer (202-523-0106). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, of the Office of Management and Budget, Attention: Francine Picoult, Desk Office for the U.S. International Trade Commission. If you anticipate commenting on a form

but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202-395-7231). Copies of any comments should be provided to Mr. William E. Fry (U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436).

Issued: May 21, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-12621 Filed 5-23-85; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-52 (Sub-37)]

### The Atchison, Topeka & Santa Fe Railway Co.—Abandonment—in Douglas and Franklin Counties, KS; Findings

The Commission has found that the public convenience and necessity require or permit The Atchison, Topeka and Santa Fe Railway Company to abandon its 11.09-mile line of railroad between Baldwin (milepost 14.95) and Ottawa (milepost 26.04) in Douglas and Franklin Counties, KS. A certificate will be issued authorizing abandonment within 15 days after publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA."

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 12577 Filed 5-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-232)]

### Burlington Northern Railroad Co.—Abandonment—Grow Wing, Cass, Hubbard, Beltrami, Itasca and Koochiching Counties, MN; Findings

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon its 193.12-mile line of railroad between Brainerd (milepost 1.60) and Bemidji (milepost 90.87) and between Bemidji (milepost 95.15) and International Falls (milepost 199.00) in Crow Wing, Cass, Hubbard, Beltrami, Itasca and Koochiching Counties, NW.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-12580 Filed 5-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-8 (Sub-8)]

### The Denver & Rio Grande Western Railroad Co.—Abandonment—in Utah, Sanpete, and Sevier Counties, UT; Findings

May 17, 1985.

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided May 17, 1985, a finding, which is administratively final, was made by the Administrative Law Judge stating that, the present or future public convenience and necessity permit the abandonment by the applicant, Denver and Rio Grande Western railroad, of its line of railroad extending from milespost O at Thistle, UT to milepost 103.7 near Richmond, UT, subject to the employee protective conditions in *Oregon Short Line R. Co. Abandonment-Goshen*, 360

I.C.C. 1979, and to a condition which would provide an option for preservation of the right-of-way. Pursuant to the Judge's decision, the application for abandonment is granted, effective 30 days from the date of service, except as the Commission may elect to hear a discretionary appeal. However, offers either of financial assistance or to purchase the line must be filed within 10 days of the publication of this notice under the provisions of 49 U.S.C. 10905.

James H. Bayne,

Secretary.

[FR Doc. 85-12578 Filed 5-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-19, 69 (Sub-18X and 92X)]

**Western Maryland Railway Co. & The Baltimore & Ohio Railroad Co.—Abandonment and Discontinuance of Service Exemption—in Webster County, WV**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Western Maryland Railway Company, and the discontinuance of service by The Baltimore & Ohio Railroad Company, of 12.47 miles of railroad extending between milepost 86.17 near Webster Springs, and milepost 73.70 near Bergoo, in Webster County, WV.

**DATES:** This exemption will be effective June 24, 1985. Petitions to stay must be filed by June 3, 1985, and petitions for reconsideration must be filed by June 13, 1985.

**ADDRESSES:** Send pleadings referring to Docket Nos. AB-69 (Sub-No. 18X) and AB-19 (Sub-No. 92X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

**FOR FURTHER INFORMATION CONTACT:** Louise E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 13, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio,

James H. Bayne,

Secretary.

[FR Doc. 85-12579 Filed 5-23-85; 8:45 am]

BILLING CODE 7035-01-M

**Intent To Engage in Compensated Intercompany Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Mobil Corporation, 150 E. 42nd Street, New York, New York 10017.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

Container Corporation of America—Delaware

Montgomery Ward & Co., Inc.—Illinois

American Delivery Service

Company—Delaware

Jefferson Stores, Inc.—Delaware

Jefferson Ward Stores, Inc.—

Delaware

Standard T Chemical Company, Inc.—Delaware

Mobil Oil Corporation—New York

MCT Services Inc.—Delaware

Pasadena Chemical Corporation—

Delaware

W.F. Hall Printing Company—Delaware

Chicago Rotoprint Company—Illinois

Hall of Mississippi, Inc.—Delaware

Hall of Tennessee, Inc.—Delaware

W.F. Hall Printing Company of

Georgia, Inc.—Delaware

1. Parent corporation and address of principal office: Poly-America, Inc., 2000 West Marshall Drive, Grand Prairie, Texas 75051.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation: (i) Poly Trucking, Inc., 2000 West Marshall Drive, Grand Prairie, Texas 75051, State of Incorporation: Texas.

James H. Bayne,

Secretary.

[FR Doc. 85-12575 Filed 5-23-85; 8:45 am]

BILLING CODE 7035-01-M

**Aero Mayflower Transit Co.; Predetermined Price Protection Tariff Item**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of oral hearing.

**SUMMARY:** The Commission is setting for oral hearing the rejection of Aero Mayflower's Predetermined Price Protection Tariff Item.

**DATES:** Oral hearing will be heard at 9:30 a.m. on June 12, 1985. Parties seeking to participate must contact Aero Mayflower, or the Director of the Commission's Bureau of Traffic, as appropriate, by June 5, 1985. Aero Mayflower must submit to the Commission, by June 8, 1985, a list of parties who will speak. The Commission will issue a schedule of appearances and contact the parties who have been afforded time.

**ADDRESSES:** The oral hearing will be held in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Avenue, NW., Washington, D.C. To request an opportunity to participate, please contact as appropriate:

Daniel E. Yates, Executive Vice President, Aero Mayflower Transit Company, Inc., P.O. Box 107, Indianapolis, Indiana 46206-0107, (317) 875-1000

Neil S. Llewellyn, Director, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:**

Neil S. Llewellyn, (202) 275-7348; or Charles E. Langyher, (202) 275-7739.

**SUPPLEMENTARY INFORMATION:** This hearing is for the purpose of determining the lawfulness of Aero Mayflower Transit Company's Predetermined Price Protection item in tariff ICC HGB 104-A. Aero Mayflower Transit Company, and other parties supporting the tariff item, will be given one hour and fifteen minutes to present their arguments, and Aero Mayflower will be allowed to reserve part of this time for rebuttal. Counsel for Aero Mayflower must submit to the Commission a list of parties and time allocations by June 8, 1985. Those parties opposing the tariff item will then be given one hour and fifteen minutes, and the Bureau of Traffic will likewise be allowed to reserve time for rebuttal. The opposing parties should contact Mr. Llewellyn to request time and he will coordinate the appearances and make the time allocations.

It may not be possible for all parties seeking to present argument to be allocated time. Therefore, parties should consider consolidating their requests where possible. Also, no participant will be allotted less than ten minutes. The individuals designated to be heard will be contacted as soon as possible, and a schedule of appearances will be issued before the hearing.

All participants shall, at the time of the hearing, submit to the Commission ten written copies of their prepared remarks and any supporting exhibits. Written statements, which should correspond to the oral presentations, will be made a part of the record. Issues raised in the record will be considered even if not raised during the oral presentation.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: May 17, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: May 17, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-12787 Filed 5-23-85; 10:48 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Proposed Consent Decree In Action To Enjoin Release of Hazardous Wastes

In accordance with Departmental regulations, 28 CFR 50.7, notice is hereby given that on May 20, 1985, a proposed Consent Decree between the United States and Westinghouse Electric Corporation in *United States of America and Environmental Management Board of the State of Indiana v. Westinghouse Electric Corporation v. Monsanto Company*, No. IP-83-9-C, was lodged with the United States District Court for the Southern District of Indiana. The Consent Decree also resolves a related case, *City of Bloomington, et al. v. Westinghouse Electric Corporation, et al.*, No. IP-81-448-C, pending in the same district.

The United States filed a complaint in January, 1983 against Westinghouse Electric Corporation seeking remedial action and cost recovery at two sites in Southern Indiana ("Neal's Landfill" and "Neal's Dump") where Westinghouse is alleged to have disposed of capacitors containing polychlorinated biphenyls ("PCBs"), other PCB contaminated waste and other hazardous substances. The Complaint was filed under the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607.

The Consent Decree resolves the United States' claims for permanent injunctive relief and cost recovery at the two sites and four others in the area. It also resolves the claims of the intervenor, State of Indiana, and of the City of Bloomington in its separate

litigation against Westinghouse. Under the Consent Decree Westinghouse agrees to excavate six sites, including adjacent stream sediments, in the vicinity of Bloomington, Indiana where Westinghouse is alleged to have disposed of polychlorinated biphenyls ("PCBs") and other hazardous wastes and to remove the excavated PCBs, waste, soils and sediment for destruction in a hazardous waste/PCB incinerator to be constructed and operated by Westinghouse. Westinghouse agrees to obtain all necessary state and federal permits for construction and operation of the incinerator and to guarantee its performance. Westinghouse also agrees to perform interim cleanup measures at the sites prior to excavation and incineration, to grade and cover the sites, to perform extensive pre and post-closure groundwater monitoring, and to provide potable water to certain area residents whose well water may be contaminated with PCBs based on monitoring results.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments related to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States of America and Environmental Management Board of the State of Indiana v. Westinghouse Electric Corporation v. Monsanto Company*, D.J. Ref. No. 90-7-1-212.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, Room 274, 46 East Ohio Street, Indianapolis, Indiana 46204, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. If requesting a copy, please enclose a check in the amount of \$12.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-12783 Filed 5-23-85; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

[Docket No. 85-24]

### Janssen's Fentanyl Application; Manufacture of a Controlled Substance; Objections, Requests for Hearing, and Hearing

On April 11, 1985 at 50 FR 14324, notice was given that Janssen, Inc., P.O. Box JPH, State Road 933 KM 0.1, Mamey Ward, Gurabo, Puerto Rico 00658, had made application to the Drug Enforcement Administration for registration as a bulk manufacturer of two basic classes of controlled substances listed in Schedule II of the Controlled Substances Act of 1970, sufentanil and fentanyl. Opportunity was given for the filing of comments, objections and requests for hearing with respect to the application.

Objections and requests for hearing with respect to Janssen's application for registration as a bulk manufacturer of fentanyl were filed on behalf of Mallinckrodt, Inc. (Mallinckrodt) and Johnson-Matthey, Inc. (JMI).

Millinckrodt is presently an applicant for registration as a bulk manufacturer of fentanyl itself and states its belief that the granting of the application for registration of Janssen should not affect Mallinckrodt's own pending application. Mallinckrodt's request for a hearing is intended to insure that Janssen's application has no such adverse effect. Mallinckrodt further states that if DEA determines that it is in the public interest to register only one company to manufacture fentanyl, then it, Mallinckrodt, can produce the substance most efficiently and with maximum regard for security.

Millinckrodt also requests that all proceedings with respect to the registration of bulk manufacturers of fentanyl be consolidated.

JMI is also presently an applicant for registration as a bulk manufacturer of fentanyl and states its position as being similar to the one taken by Mallinckrodt, i.e., that the registration of Janssen as a bulk manufacturer of fentanyl should not affect its own, in this case, JMI's pending application for similar registration.

JMI objects to the registration of Janssen, as well as the registration of the other present applicant, Mallinckrodt, but only if DEA or another party comes forward with a factual basis that supports consideration of limiting the manufacture of fentanyl to a single company.

Accordingly, notice is hereby given pursuant to 21 CFR 1301.43 that a hearing will be held on the aforesaid application of Janssen, Inc., for registration as a bulk manufacturer of fentanyl, commencing at 10:20 a.m. on Friday, June 28, 1985, in Room 1213, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537, the proceedings on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings, and to determine whether any consolidation of proceedings is appropriate. Any person entitled to participate in said hearing and desiring to do so should file a notice of appearance pursuant to 21 CFR 1301.54 and 1316.46 within thirty days of the date of publication of this notice. A person who has filed a request for hearing need not also now file a notice of appearance.

Dated: May 20, 1985.

John C. Law, Jr.

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-12590 Filed 5-23-85; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Forms Under Review by the Office of Management and Budget (OMB)

##### Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

##### List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.  
Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6890, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### Revision

##### Bureau of Labor Statistics

Consumer Price Index Housing Survey  
1220-0034; BLS 2921E, BLS 222I, 222R,  
BLS 222S, BLS 222IP, BLS 222.01 I/R,  
BLS 222.02 I/R

Semiannually/annually

Individuals or households; Business or other for profit; Small businesses or organizations

75,420 responses; 17,979 hours; 7 forms

The Consumer Price Index (CPI) Housing Survey is the nation's chief source of information on change in both residential rent and shelter costs of owner occupants. The Housing Survey currently provides the measure of price change for about 20 percent of the CPI. The CPI is the nation's leading measure of inflation at the retail level. It is widely used to develop and to measure the success of national economic policy and to escalate both federal and private payments of many kinds. As part of the 1987 revision of the CPI, the Bureau of Labor Statistics (BLS) is making significant changes in its Housing Survey data collection methods. In particular, the procedures for collecting

data are being rigidly structured to standardize the collection interview.

#### Bureau of Labor Statistics

##### Standard Industrial Classification

Refiling Forms 1220-0032; BLS-3023 C, BLS-3023 V, BLS-3023 P

Other—Once every three years

Businesses or other for-profit institutions; Farms; State and local governments; Federal agencies or employees; Non-profit institutions; Small businesses or organizations  
1.7 million responses annually; 191,533 hours; 3 forms

The Standard Industrial Classification Refiling Form is used by the Bureau of Labor Statistics to keep current the Standard Industrial Classification codes of all establishments covered by Unemployment Insurance. Accurate SIC coding of these establishments is essential since they serve as the Bureau of Labor Statistics establishment sampling frame, as the employment benchmark for all Bureau of Labor Statistics Federal-State programs, and as inputs into GNP and Personal Income Estimates. They are used extensively for economic analysis, fund allocations and program administration and are the basis for industry data in the ES-202 Report.

#### Extension

##### Employment and Training Administration

Service Delivery Area Appeal 1205-0202; ETA RC 54

On occasion

State or local governments  
20 respondents; 40 hours

The information collected will be used to determine whether JTPA recipients' denial of designation of entities as service delivery area is in conformance with the JTPA.

#### Extension

##### Mine Safety and Health Administration

##### Mine Accident, Injury, and Illness

Reprot (MSHA Form 7000-1) (30 CFR Part 50)

1219-0007

On occasion

Businesses and other for profit; small businesses or organizations  
24,300 responses; 19,109 hours

Mine operators are required to submit Form 7000-1 to MSHA to report on accidents, injuries, and illnesses at their mines shortly after an accident or injury has occurred or a work-related illness has been identified. The use of the form provides for uniform information gathering.

Signed at Washington, D.C., this 21st day of May 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-12645 Filed 5-23-85; 8:45 am]

BILLING CODE 4510-24-M

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20313.

Signed at Washington, D.C., this 20th day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

#### APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Boise Cascade Corp. (Brotherhood of Carpenters)	Clatskanie, OR	5/7/85	5/2/84	TA-W-16,004	Lumber and other wood products.
Do	Aberdeen, WA	5/7/85	5/2/85	TA-W-16,005	Lumber and other wood products.
Bomber Bail Co. (workers)	Gainesville, TX	5/9/85	5/1/85	TA-W-16,006	Fishing lures.
Briggs & Stratton Corp. (UAW)	Perry, GA	5/13/85	5/8/85	TA-W-16,007	Car and truck locks and keys.
Fleet-Air Corp. (workers)	Ephrata, PA	5/13/85	5/6/85	TA-W-16,008	Children's shoes.
H.L. Balsinger, Inc. (company)	New Salem, PA	5/13/85	5/8/85	TA-W-16,009	Blasting agents.
Hilo Coast Processing Co. (company)	Popeo, HI	5/13/85	5/10/85	TA-W-16,010	Raw sugar.
Pico Products, Inc. (IBEW)	Liverpool, NY	5/14/85	5/10/85	TA-W-16,011	Traps and filter for CATV signal security printed circuit board.
Rancon, Inc., Rancon Controls Div. (wkrs)	Plain City, OH	5/13/85	5/7/85	TA-W-16,012	Controls for refrigerators, stoves, air-conditioners.
Rockford Textile Mills (workers)	McMinnville, TN	5/3/85	4/29/85	TA-W-16,013	Socks, dress, sport.
Texscan Corp. (company)	Phoenix, AZ	5/15/85	4/16/85	TA-W-16,014	Power supplies, trunk stations, forward stations, pads and equalizers—for cable TV.
Wing Shoe Corp. (workers)	Amsterdam, NY	5/13/85	5/7/85	TA-W-16,015	Women's shoes, house slippers.
Bohemia, Inc. (United Brotherhood of Carpenters)	Auburn, CA	5/13/85	5/7/85	TA-W-16,016	Lumber and wood products.
Consolidation Coal Co., Blacksville Operation (UMWA)	Auburn, WV	5/13/85	5/7/85	TA-W-16,017	Steam coal.
Perry Manufacturing Corp. (ILGWU)	Perryopolis, PA	5/14/85	5/6/85	TA-W-16,018	Rainwear, car coats, and jackets.
Seamless Hospital Products Co., Inc. (URW)	Fayette, AL	5/13/85	5/8/85	TA-W-16,019	Plastic disposable hospital products.
Tube-Lok Products (workers)	Mattoon, IL	5/13/85	5/6/85	TA-W-16,020	Roller protection systems, weldments.
Universal Sportswear Inc. (workers)	Howell, NJ	5/14/85	5/9/85	TA-W-16,021	Ladies sportswear and dresses.
Virginia Maid Hosiery Mills (ACTWU)	Pulaski, VA	5/14/85	5/6/85	TA-W-16,022	Hosiery.
Virginia Wire & Fabric Co. (workers)	Warrenton, VA	5/13/85	4/29/85	TA-W-16,023	Steel wire Nails, staples, collated nails and fasteners.

[FR Doc. 85-12646 Filed 5-23-85; 8:45 am]

BILLING CODE 4510-30-M

## LEGAL SERVICES CORPORATION

### Development of Source Materials on Laws Affecting the Elderly; Announcement of Intention To Award Funds

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of Intention To Award Funds.

**SUMMARY:** The Legal Services Corporation through its Office of Field Services announces its intention to award one time grants in the following amounts and for the following periods to:

Grantee	Time	Amount
University of Southern California	7/1/86-6/30/87	\$50,000
Milwaukee Young Lawyers Association	1/1/86-12/31/86	4,558

Grantee	Time	Amount
Center for the Public Interest	7/1/85-3/31/86	22,712
Maryland State Bar Association	7/1/85-6/30/86	5,000
University of Pittsburgh	6/1/86-5/31/87	25,000

These awards are for the development of source materials on laws affecting the elderly.

These funds will be awarded on a non-recurring basis under the authority of Pub. L. 98-411 and section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974 as amended.

There will be no refunding rights for these one time grants.

Notice is issued pursuant to section 1007(f) of the Legal Services Corporation Act of 1974 as amended, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

The grant award will not become effective and grant fund will not be

distributed prior to the expiration of the thirty day period.

**DATE:** All comments must be received by the Legal Services Corporation within 30 days from the date of publication of this notice.

#### FOR FURTHER INFORMATION CONTACT:

Beverly Bunn, Legal Services Corporation, Office of Field Services, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272-4351.

**SUPPLEMENTARY INFORMATION:** Grants are awarded pursuant to the Legal Services Corporation's announcement of availability of funds. Announcement of funding availability was made for developing classroom and Bar Association source materials on laws affecting the elderly, *Federal Register*, p. 12665 March 29, 1985.

The Legal Services Corporation intend these grants to increase and improve the quality of legal services to elderly poor persons presently unserved or underserved. Additionally, funded

programs should sensitize and educate the present bar and future lawyers to the legal need of the elderly.

Peter P. Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-12655 Filed 5-23-85; 8:45 am]

BILLING CODE 6820-35-M

### Public Notice and Request for Comments To Augment Existing Civil Legal Services to Poor Individuals

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Legal Services Corporation (LSC) announces its intention to award a grant to the Legal Aid Society of Salt Lake in Salt Lake City, Utah for purposes of testing a project augmenting existing civil legal services to poor individuals. LSC is the federally funded, nonprofit, private corporation that oversees and funds more than three hundred field programs nationwide which provide basic civil legal services to poor individuals.

LSC will fund a grant of \$95,000 to the Legal Aid Society of Salt Lake for the administration and operation of a project testing the workability and effectiveness of competitively-negotiated legal services contracts with private attorneys. Proposals and competitive bids will be accepted from private legal provider in the Salt Lake City, Utah area for services to the eligible client population for a minimum of 100 personal bankruptcy and 400 domestic relations cases. Information regarding proposal instructions, bid structure, and contract requirements for this demonstration project will be contained in the solicitation package to be made available by the Legal Aid Society of Salt Lake.

As a research demonstration project, this grant will be awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3)(A) of the Legal Services Corporation Act of 1974, as amended.

**DATE:** All comments must be received by LSC by June 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Legal Services Corporation, Office of Field Services, Program Development and Substantive Support Unit, Michael M. Losavio, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272-4356.

Thomas Opsut,

Interim President.

[FR Doc. 85-12544 Filed 5-23-85; 8:45 am]

BILLING CODE 6820-35-M

### Announcement of Intention To Award Funds

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of Intention To Award Funds.

**SUMMARY:** The Legal Services Corporation through its Office of Field Services announces its intention to award one time grants in the following amounts and for the following periods to:

Region	Time	Amount
I Franklin Pierce Law Center.....	7/1/85-6/30/87	\$100,000.00
I Brooklyn Law School.....	7/1/85-6/30/87	97,150.00
II George Washington University.....	7/1/85-12/31/86	92,122.00
II Catholic University of America.....	7/1/85-6/30/87	99,750.00
II Campbell University.....	8/1/85-6/30/87	48,975.00
I West Virginia University.....	7/1/85-6/30/87	80,000.00
II College of William & Mary Marshall Wythe School of Law.....	7/1/85-6/30/87	80,000.00
III University of Alabama.....	7/1/85-6/30/87	92,000.00
III Stetson University.....	8/1/85-6/30/87	80,000.00
IV Thomas M. Cooley Law School.....	10/1/85-6/30/87	56,829.76
IV Southern Illinois University.....	7/1/85-6/30/87	80,861.00
V University of New Mexico School of Law.....	7/1/85-6/30/87	100,000.00V
V Thurgood Marshall School of Law.....	7/1/85-6/30/87	86,220.00
V University of Texas at Austin.....	7/1/85-6/30/87	75,000.00
VI University of Nebraska College of Law.....	7/1/85-6/30/87	99,070.00
VI Lewis & Clarke College of Law at Northwestern University.....	7/1/85-6/30/87	55,200.00
VI Drake University.....	7/1/85-6/30/87	100,000.00
VII McGeorge School of Law College of the Pacific.....	7/1/85-6/30/87	100,000.00
VII University of Utah College of Law.....	7/1/85-6/30/87	60,000.00
Total 19 Grants.....		1,583,177.76

These awards are for the implementation of Law School Civil Clinical Program.

These fund will be awarded on a nonrecurring basis under the authority of Pub. L. 98-411 and section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Service Corporation Act of 1974 as amended.

There will be no refunding rights for these one-time grants.

Notice is issued pursuant to section 1007(f) of The Legal Services Corporation Act of 1974 as amended, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

The grant award will not become effective and grant funds will not be distributed prior to the expiration of the thirty-day period.

**DATE:** All comments must be received by the Legal Services Corporation within 30

days from the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Beverly Bunn, Legal Services Corporation, Office of Field Service, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272-4351.

**SUPPLEMENTARY INFORMATION:** Grants are awarded pursuant to the Legal Services Corporation's announcement of availability of funds. Announcement of funding availability was made for law school civil clinical programs to improve the quality of legal services to elderly persons, (Federal Register, p. 11469, March 21, 1985).

The Legal Services Corporation intends these grants to increase and improve the quality of legal services to elderly poor persons presently unserved or underserved. Additionally, funded programs should sensitize and educate the present bar and future lawyers to the legal needs of the elderly.

Peter P. Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-12543 Filed 5-23-85; 8:45 am]

BILLING CODE 6800-35-M

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-31]

#### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by June 3, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and

the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

#### Reports

**Title:** DOD Property Record (NASA Use).

**OMB Number:** 2700-0025.

**Type of Request:** Extension.

**Frequency of Report:** On occasion.

**Type of Respondent:** Businesses or other for-profit, non-profit institutions, small businesses or organizations.

**Annual Responses:** 3,000.

**Annual Burden Hours:** 1,476.

**Abstract—Needs/Uses:** The DOD Form 1342, Section I, is used to update the NASA Equipment Visibility System (EVS). The NASA EVS satisfies agency management needs and GAO concerns regarding NASA's equipment resources. NASA uses the DOD form rather than creating another Government form and set of reporting instructions.

**Richard L. Daniels,**

*Deputy Director, Logistics Management and Information Programs Division.*

[FR Doc. 85-12523 Filed 5-23-85; 8:45 am]

**BILLING CODE 7510-01-M**

[85-32]

#### NASA Advisory Council, Aeronautics Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Executive Subcommittee.

**DATE AND TIME:** June 20, 1985, 8:30 a.m. to 5 p.m.

**ADDRESS:** National Aeronautics and Space Administration, 600 Independence Avenue SW., Room 825, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Raymond S. Colladay, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/453-2695).

**SUPPLEMENTARY INFORMATION:** The Informal Executive Subcommittee was established to provide overall guidance and direction to the aeronautics research and technology activities of the Aeronautics Advisory Committee. The Subcommittee, Chaired by Mr. Robert B. Ormsby, is comprised of twelve members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

**Type of Meeting:** Open.

#### Agenda

June 20, 1985.

8:30 a.m.—Welcome, Introduction of New Chairperson.

8:45 a.m.—Opening Remarks.

9 a.m.—Committee Reorganization Status.

10 a.m.—Aeronautical Research and Technology Plans:

—National Goals for Aeronautics.

—Fiscal Year 1987 New Initiatives.

12:30 p.m.—NASA Responses to Recommendations.

1:30 p.m.—Identification of Candidate Study Areas and Agenda Development.

3 p.m.—General Topics for Discussion.

4 p.m.—Summary of Meeting Results with Office of Aeronautics and Space Technology Management.

5 p.m.—Adjourn.

Dated: May 17, 1985.

**Richard L. Daniels,**

*Deputy Director, Logistics Management and Information Programs Division, Office of Management.*

[FR Doc. 85-12524 Filed 5-23-85; 8:45 am]

**BILLING CODE 7510-01-M**

#### NATIONAL SCIENCE FOUNDATION

##### Advisory Committee on Chemical, Biochemical, and Thermal Engineering; Meeting

May 21, 1985.

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

**Name:** Advisory Committee on Chemical, Biochemical, and Thermal Engineering (Formerly Advisory Committee for Chemical and Process Engineering).

**Type of Meeting:** June 10—Closed; June 11 and 12—Open.

**Date:** June 10, 11, and 12, 1985.

**Place:** Room 540, 1800 G Street, NW., Washington, D.C. 20550.

**Contact Person:** Dr. Marshall M. Lih, Division Director, Chemical, Biochemical,

and Thermal Engineering, Room 1128, National Science Foundation, Washington, DC., 20550. Telephone: 202-357-9600.

**Summary Minutes:** May be obtained from Dr. Marshall M. Lih, Director, Division of Chemical, Biochemical, and Thermal Engineering, Room 1128, National Science Foundation, Washington, DC., 20550. Telephone: 202-357-9600.

**Purpose of Committee:** To provide directions to Chemical, Biochemical, and Thermal Engineering research.

#### Agenda

**Monday, June 10—Closed—8:00 a.m. to 5:00 p.m.**

Review and comparison of declined proposals (and supporting documentation) with successful awards under the Chemical, Biochemical, and Thermal Engineering Division, including review of peer review materials and other privileged materials.

**Tuesday, June 11—Open**

9:00 a.m.—Introduction by Chairman, Division Director and Status Report by NSF Management

10:00 a.m.—Questions and Answers

10:15 a.m.—Briefing by Selected Division Programs and NSF Staff

11:45 a.m.—Questions and Answers

12:00 p.m.—Recess

1:30 p.m.—Continued Briefing, Discussion and Task Group Meetings

5:00 p.m.—Adjournment for the Day

**Wednesday, June 12—Open—8:30 a.m. to 4:00 p.m.**

8:30 a.m.—Oral Reports from the Program

Auditing Teams and Task Groups

9:30 a.m.—Discussion of Issues

11:45 a.m.—Recess

1:15 p.m.—Continued Discussion of Issues

4:00 p.m.—Adjourn

**Reason for Closing:** The Oversight Review Team will be reviewing grant and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declination proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government Sunshine Act.

**Authority to Close Meeting:** This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of P.S. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, July 8, 1979.

**M. Rebecca Winkler,**

*Committee Management Officer.*

FR Doc. 85-12619 Filed 5-23-85; 8:45 am]

**BILLING CODE 7555-01-M**

#### Advisory Committee for Industrial Science and Technological Innovation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463,

the National Science Foundation announces the following meeting:

Name: Advisory Committee for Industrial Science and Technological Innovation.

Date and Time: June 10, 1985; 8:30 a.m.—5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 1242B, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mr. Robert D. Lauer, Section Head, Division of Industrial Science and Technological Innovation, Room 1250, National Science Foundation, Washington, DC 20550 (202) 357-7527.

Summary of Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support for research in NSF programs administered by the Division of Industrial Science and Technological Innovation.

#### Agenda

June 10, 1985; 8:30 a.m.—11:45 a.m.

Update on Division of Industrial Science and Technological Innovation (ISTI) activities. ISTI Program Review. Long Range Planning Environment/Preliminary.

June 10, 1985; 11:45 a.m.—1:15 p.m.

Lunch.  
June 10, 1985; 1:15 p.m.—5:00 p.m.  
Long Range Planning mini-group meetings for: Equipment Donation/Discount Activities, Office of Small and Disadvantaged Business Utilization and Office of Small Business Research and Development, and Small Business Innovation Research Program.

Dated: May 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-12650 Filed 5-23-85; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 6-8, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the *Federal Register* on May 23, 1985.

The agenda for the subject meeting will be as follows:

Thursday, June 6, 1985

8:30 a.m.—8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.—12:45 p.m.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—The members of the Committee will discuss

the FDA requested for this standardized type of BWR. Members of the NRC Staff and the General Electric Company will participate in this review as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this type of facility and detailed information regarding security arrangements for this type of nuclear plant.

1:45 p.m.—3:45 p.m.: NRC Safety Research Program and Budget (Open)—The members will discuss the proposed ACRS report to the NRC regarding the proposed NRC safety research program and budget for FY 1987.

3:45 p.m.—5:00 p.m.: Watts Bar Nuclear Plant Units 1 and 2 (Open/Closed)—The members will hear and discuss reports from representatives of the NRC Staff regarding evaluation and resolution of deficiencies in the quality assurance program for this nuclear power station as well as resolution of outstanding items in the Committee's report dated August 16, 1982 on proposed operation of this facility.

Portions of this session will be closed as required to prevent disclosure of investigatory records compiled for law enforcement purposes which would disclose the identity of a confidential source.

5:00 p.m.—6:00 p.m.: ACRS Subcommittee Activities (Open/Closed)—The members will hear and discuss the reports of designated subcommittee chairmen and members regarding assigned safety related activities including the preparation of an ACRS report to the NRC regarding decay heat removal provisions at nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed.

Friday, June 7, 1985

8:30 a.m.—9:00 a.m.: NRC Regulatory Activities (Open)—The members will consider topics regarding the NRC regulatory process for discussion with the NRC Executive Director for Operations.

9:00 a.m.—10:00 a.m.: Meeting with NRC Executive Director for Operations (Open)—The members will discuss with the EDO and members of his staff regulatory matters of mutual interest.

10:00 a.m.—12:00 Noon: NRC Safety Research Program and Budget (Open)—The members will discuss the proposed ACRS report to the NRC regarding the proposed NRC safety research program and budget for FY 1987.

1:00 p.m.—1:30 p.m.: Future ACRS Activities (Open)—The members of the Committee will discuss anticipated

ACRS Subcommittee activities and items proposed for consideration by the full Committee.

1:30 p.m.—3:30 p.m.: Quantitative Safety Goals (Open)—The members will hear and discuss the report of its subcommittee regarding the NRC Staff evaluation of the two-year trial use of the proposed NRC quantitative safety goals and the proposed implementation plan for these goals. Representatives of the NRC Staff and the nuclear industry will take part as appropriate.

3:30 P.M.—5:30 P.M.: Security Provisions at Nuclear Facilities (Open/Closed)—The members will discuss proposed ACRS comments regarding security provisions at nuclear power plants. Representatives of the NRC Staff will participate as appropriate.

Portions of this session will be closed as required to discuss detailed security provisions for nuclear power plants

5:30 P.M.—6:30 P.M.: ACRS Subcommittee Activities (Open)—The ACRS members will discuss proposed changes in NRC rules and regulations applicable to containment leak rate testing and criteria for programmable digital computer systems software in safety-related systems of nuclear power plants.

Saturday, June 8, 1985

8:30 A.M.—11:30 A.M.: Preparation of ACRS Reports (Open/Closed)—The members of the Committee will discuss proposed ACRS reports to the Nuclear Regulatory Commission regarding items considered during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed, National Security Information, on detailed plans for security provisions at specific nuclear power stations.

11:30 A.M.—12:30 P.M. and 1:30 P.M.—2:30 P.M.: ACRS Subcommittee Activities (Open/Closed)—The ACRS members will hear and discuss the status of assigned activities regarding nuclear reactor safety and regulation including the NRC reliability assurance program for nuclear power plant components, NRC long-range activities, proposed use of PRA results for specific nuclear plants, and discussion with foreign advisory groups regarding safety-related features in the nuclear power plants.

Portions of this session will be closed to discuss information provided in confidence by a foreign source.

2:30 P.M.—3:30 P.M.: ACRS Procedures and Practice (Open/Closed)—The members will discuss proposed changes to ACRS Bylaws including proposed

guidance regarding conduct of individual members and criteria for the makeup of ACRS subcommittees.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss National Security Information [5 U.S.C. 552b(c)(1)], Proprietary Information [5 U.S.C. 552b(c)(4)], detailed security information [5 U.S.C. 552b(c)(3)], information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], and to discuss investigatory records compiled for law enforcement purposes or information which if written would be contained in such records to the extent that production of such information would disclose the identity of a confidential source [5 U.S.C. 552b(c)(7)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F.

Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: May 20, 1985.

John C. Hoyle,  
Advisory Committee Management Officer.  
[FR Doc. 85-12647 Filed 5-23-85; 8:45 am]  
BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION Program Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announced the following meeting:

Name: Program Advisory Committee for Advanced Scientific Computing.

Dates and Times: June 12, 13, 14, 1985—  
June 12—7:00 P.M. to 10:00 P.M.  
June 13—8:30 A.M. to 5:00 P.M.  
June 14—8:30 A.M. to 3:00 P.M.

Place: National Science Foundation, 1800 G St. NW., Washington, DC 20550.

June 12

### Subcommittee Meetings

Room 504—New Technologies (Dr. John Connolly)

Room 533—Centers (Dr. Larry Lee)

Room 536—Networking—(Dr. Dennis Jennings)

June 13, Room 540

June 14, Room 540

Security Notice: Due to security regulations, persons wishing to attend the June 12, 13, 14 meetings must notify the Office of Advanced Scientific Computing by June 10, 1985 at (202-357-7558).

Type of Meeting: Part Open, Part Closed.

### Open

June 12, 1985—Subcommittee Meetings—7:00 P.M. to 10:00 P.M.

### Open

June 13, 1985—(Policy Advisory Committee)—8:30 A.M. to 4:00 P.M.

### Closed

June 13, 1985—(Policy Advisory Committee)—4:00 P.M. to 5:00 P.M.

### Open

June 14, 1985—(Policy Advisory Committee)—8:30 A.M. to 3:00 P.M.

Contact Person: Dr. John W. D. Connolly, National Science Foundation, Washington, D.C. 20550, Phone: (202) 357-7558.

Summary of Minutes: May be obtained from Dr. John W. D. Connolly.

Purpose of Committee: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions and budget priorities. The closed session will discuss pending proposals.

Reason for Closing: The closed sessions of the meeting will deal with a discussion of

proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (8) of U.S.C. 552b(c); Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

Dated: May 21, 1985.

M. Rebecca Winkler,  
Committee Management Officer.  
[FR Doc. 85-12649 Filed 5-23-85; 8:45 am]  
BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

**The Connecticut Light and Power Co. et. al; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-21 issued to The Connecticut Light and Power Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees), for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would revise the Technical Specifications to allow continuous reactor operation for a period up to 48 hours with containment oxygen concentration greater than 4% and drywell to suppression chamber differential pressure less than 1 psid. This amendment was requested in the licensee's application dated May 15, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would change the technical specifications to permit containment deintering and pressure equalization with power reduction based on ALARA (worker radioactive exposure) considerations. The change would allow drywell entry, while at power, for visual inspection, equipment adjustments, and maintenance necessary for continuous safe reactor operation. For this type of activity current technical specifications require that the reactor be shut down within the allowed 24-hour deintering period and fully inerted within 24 hours after reactor startup. The proposed change, therefore, does not affect the time that the reactor could be operating without inerted containment or a 1 psid differential pressure between the drywell and suppression chamber. Elimination of an unnecessary plant transient reduces, though insignificantly, the probability of accident.

The licensee has evaluated the proposed technical specification changes and has determined that they do not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration set forth in 10 CFR 50.92(c), operation of Millstone Nuclear Power Station, Unit 1 in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the overall time for reactor operation with deintered containment remains unchanged from the currently approved technical specifications; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the conditions for postulated accidents remain unchanged from those previously evaluated; or (3) involve a significant reduction in a margin of safety, because the proposed changes do not affect the previously evaluated safety margins. Based on the above, the staff therefore proposes that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By June 24, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325-

6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Branch Chief, Operating Reactors Branch No. 5, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the *Federal Register* notice. A copy of the petition should also be Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06358.

Dated at Bethesda, Maryland, this 20th day of May 1985.

For The Nuclear Regulatory Commission,  
John A. Zwolinski,  
Chief, Operating Reactors Branch No. 5,  
Division of Licensing.

[FR Doc. 85-12651 Filed 5-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

**General Public Utilities Nuclear Corp.;  
Three Mile Island Nuclear Station, Unit  
2; Exemption**

I

GPU Nuclear Corporation, Metropolitan Edison, Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On April 11, 1983, General Public Utilities Nuclear Corporation (GPUNC) submitted Revision 2 to their Recovery Quality Assurance Plan (RQAP) for Three Mile Island, Unit 2. In the letter accompanying the revised plan, they also requested a partial exemption from the update requirements of 50.54(a). The staff responded to the April 1983 letter on October 17, 1983 but because a separate exemption had to be issued, the NRC did not address the partial exemption request in that correspondence. On April 17, 1984, GPUNC submitted Revision 3 to the RQAP which was approved by the staff on June 15, 1984. The partial exemption was still under staff review and as a result was also not addressed in the latter correspondence. Therefore, the staff is now issuing a partial exemption as discussed herein.

III

10 CFR 50.54(a) requires that an update to the Quality Assurance Program, as described in the Safety Analysis Report (SAR), be provided to the appropriate NRC regional Office for inclusion in the SAR. The licensee's submittal of April 11, 1983 and April 17, 1984, satisfied the regulatory requirement for submittals; however, the plan was not incorporated into the TMI-2 FSAR.

In a letter dated February 4, 1982, the staff exempted GPUNC from the requirements of 10 CFR 50.71(e) relative to FSAR updates. In lieu of this regulation the licensee was required to update certain System Descriptions and Technical Evaluation Reports on an annual basis. Therefore this TMI-2 FSAR is no longer a current document. Since the February 1982 exemption relieved the licensee from any FSAR updating requirements, it is reasonable to also exempt the licensee from 10 CFR

50.54(a) FSAR updating requirements relative to QA program revisions. Therefore, the staff is exempting GPUNC from the requirement to submit revised FSAR pages whenever the QA program is modified. However, whenever the licensee's QA program description commitments are reduced, the modified program with modified pages must still be submitted to the NRC who will still approve the changes prior to implementation. The exemption from submitting FSAR pages does not affect the level of Quality Assurance at TMI-2 since all other regulatory requirements of 10 CFR 50.54 remain in effect.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The Commission hereby grants an exemption to the requirements of 10 CFR 50.54(a) with respect to incorporating updated QA plans into the TMI-2 FSAR.

It is further determined that the exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.30 through 51.32, issued concurrently herewith, it was concluded that the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

Effective Date: June 24, 1985. Dated at Bethesda, Maryland, Issuance Date: May 16, 1985.

For the Nuclear Regulatory Commission,

Harold R. Denton,  
Director, Office of Nuclear Reactor  
Regulation.

[FR Doc. 85-12652 Filed 5-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-508]

**Washington Public Power Supply  
System et al.; Availability of the Final  
Environmental Statement for  
Washington Nuclear Project No. 3**

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (NUREG-1033) has been prepared by the

Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Washington Nuclear Project No. 3 (WNP-3) located in Grays Harbor County, Washington. The owners of WNP-3 are Washington Public Power Supply System, Pacific Power and Light Company, Portland General Electric Company, Puget Sound Power and Light Company and Washington Water Power Company.

Copies of NUREG-1033 are available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW, Washington, D.C., and at the W.H. Abel Memorial Library, 125 Main Street, South, Montesano, Washington. The document is also being made available at the Office of the Governor, Planning and Community Affairs Agency, 400 Capitol Center Building, Olympia, Washington 98504, the Office of Financial Management, 109 House Office Building, Olympia, Washington 98504 and at the Grays Harbor Regional Planning Commission, 2109 Simpson Avenue, Suite 202, Aberdeen, Washington 98520.

The notice of availability of the Draft Environmental Statement for WNP-3 and request for comments from interested persons was published in the *Federal Register* on January 27 and March 1, 1984 (49 FR 3523 and 49 FR 7676, respectively). Comments from Federal, State, and local agencies and interested members of the public have been included in an appendix to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-1033) may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date. NUREG-1033 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 13th day of May, 1985.

For The Nuclear Regulatory Commission,  
George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-12653 Filed 5-23-85; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Employees Health Benefits Program; Reserve Levels; Public Hearing

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** The Office of Personnel Management will hold a public hearing on the question of reserve levels in the Federal Employees Health Benefits (FEHB) Program and alternative methods to reduce reserve levels.

**DATE:** The public hearing will be held at the U.S. Office of personnel Management beginning at 10:00 a.m. on May 30, 1985, in the Auditorium, Ground Floor, 1900 E Street NW., Washington, D.C. Three sessions are tentatively scheduled: 10-12, 2-4, and 5-7 p.m.

**FOR FURTHER INFORMATION CONTACT:** Kevin Burns, Assistant Director for Insurance Programs, Compensation Group, OPM, Room 3415, 1900 E Street NW., Washington, D.C. 20415, telephone (202) 632-4670.

**SUPPLEMENTARY INFORMATION:** Very favorable experience has caused an excess accumulation of carrier-held reserves in most FEHB insurance plans. Various methods have been proposed to address the disposition of these reserves. The rapid accumulation of reserves has caused OPM to review its policies concerning the appropriate levels and allocation of reserves in FEHB.

To assure that all interested parties have an opportunity to present their views, the Acting Director of OPM has authorized a public hearing to be held on the following issues:

- (1) Alternatives for disposition of reserve surpluses
  - a. Blue Cross-Blue Shield Association refund proposal
  - b. Use of reserves to lower future premiums
  - c. Other
- (2) Appropriate levels and allocation of reserves in the FEHB Program.

The public will be given an opportunity to make oral presentations. At the discretion of the presiding official, speakers will be limited to a maximum of 7 minutes for their presentations. Requests to make oral presentations for the record must be received no later than May 28 and may be made by telephone.

OPM will also accept written comments and other appropriate data from any interested party. Written comments and data submitted to OPM

should be received no later than June 3, 1985.

Requests to make oral presentations and submission of written comments should be addressed to Kevin Burns, at the office location and telephone number cited above.

Office of Personnel Management,  
Loretta Cornelius,  
Acting Director.

[FR Doc. 85-12654 Filed 5-23-85; 8:45 am]

BILLING CODE 6325-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Losses and Goals Advisory Committee; Meeting

**AGENCY:** Losses and Goals Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Losses statement.
  - Bonneville's losses/accounting model.
  - Other.
  - Public comment.
- Status: Open.

**SUMMARY:** The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

**DATE:** May 31, 1985, 9:00 a.m.

**ADDRESS:** The meeting will be held at the Council's hearing room in Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** John Marsh, 503-222-5161.

Edward Sheets,  
Executive Director.

[FR Doc. 85-12556 Filed 5-23-85; 8:45 am]

BILLING CODE 0000-00-M

## Resident Fish Substitutions Advisory Committee Meeting

**AGENCY:** Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Resident fish productivity information.

- Other.
  - Public comment.
- Status: Open.

**SUMMARY:** The Northwest Power Planning Council hereby announces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

**DATE:** May 29 1985, 9:00 a.m.

**ADDRESS:** The meeting will be held at the Airport Ramada Inn, Spokane, Washington.

**FOR FURTHER INFORMATION CONTACT:** John Marsh, 503-222-5161.

Edward Sheets,  
Executive Director.

[FR Doc. 85-12555 Filed 5-23-85; 6:45 am]

BILLING CODE 0000-00-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14526; File No. 812-6100]

### IDS Mutual, Inc., et al.; Application and Opportunity for Hearing

May 17, 1985.

Notice is hereby given that the IDS Mutual Inc., IDS Stock Fund, Inc., IDS Selective Fund, Inc., IDS Variable Payment Fund, Inc., IDS New Dimensions Fund, Inc., IDS Progressive Fund, Inc., IDS Growth Fund, Inc., IDS Bond Fund, Inc., IDS Cash Management Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS High Yield Tax-Exempt Fund, Inc., IDS Tax-Free Money Fund, Inc., IDS Discovery Fund, Inc., IDS Extra Income Fund, Inc., IDS International Fund, Inc., IDS Strategy Fund, Inc., IDS Precious Metals Fund, Inc., IDS Managed Retirement Fund, Inc., IDS Life Capital Resource Fund I, Inc., IDS Life Capital Resource Fund II, Inc., IDS Life Special Income Fund I, Inc., IDS Life Special Income Fund II, Inc., and IDS Life Moneyshare Fund, Inc. (the "Funds"), 1000 Roanoke Building, Minneapolis, MN 55402, and Anne P. Jones, Sutherland, Asbill & Brennan, 1666 K Street NW., Washington, D.C. 20006 (collectively referred to as "Applicants"), filed an application on April 25, 1985 and an amendment thereto on May 13, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), declaring that Ms. Jones shall not be deemed to be an "interested person" within the meaning of section 2(a)(19)(B)(iv) of the Act by reason of her being a partner of the law firm of Sutherland, Asbill & Brennan ("Sutherland") solely for purposes of determining compliance with section 15(f)(1)(A) of the Act. All interested persons are referred to the application

on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

The application states that the Funds are diversified open-end management investment companies registered under the Act. The application further states that IDS Life Insurance Company, Inc. ("IDS Life") acts as investment adviser to five of the Funds, which serve as funding vehicles for variable annuity insurance contracts issued by IDS Life. IDS Financial Services, Inc. ("IDS"), a wholly-owned subsidiary of American Express Company, acts as investment adviser and principal underwriter for the other Funds. IDS Life is a wholly-owned subsidiary of IDS. Ms. Jones is a director of each of the Funds and a partner of Sutherland.

Applicants state that certain insurance companies have formed three groups, ranging in number from approximately 15 to 30 members, to express views common to the group members on legal and policy issues concerning insurance products before the Congress, executive departments and independent agencies of the government. It is represented that IDS Life was invited by the insurance companies organizing each group to join the groups. The groups proportionately share in the associated legal and consulting costs. It is further represented that IDS Life did not retain Sutherland and cannot terminate the firm's representation of the groups. Further, Sutherland does not and never has performed any legal services individually for IDS Life.

The application states that, prior to January 12, 1984, Investors Diversified Services, Inc. was a wholly-owned subsidiary of Alleghany Corporation and that IDS is the entity existing after a merger of Investors Diversified Services, Inc. into a wholly-owned subsidiary of American Express Company. The Funds' Boards of Directors decided to use their best efforts to meet, for the required period, the condition of section 15(f)(1) of the Act that at least 75 percent of the Boards of Directors of the Funds not be interested persons of their investment advisers. Accordingly, Applicants represent that it is important to the Funds and their shareholders to clarify Ms. Jones' status under section 15(f)(1).

Applicants state that Ms. Jones has never had any professional or business relationship with IDS or IDS Life or any affiliated persons thereof, except as a director of the Funds. In addition, she has never participated in Sutherland representations of the insurance groups

in which IDS Life participates. Therefore, no direct contact has ever occurred between IDS Life and Ms. Jones. Applicants contend that Sutherland has not acted as counsel to IDS or the Funds and its representation of IDS Life is limited to advice to the various insurance company groups on general insurance industry matters not specifically tailored to IDS Life's insurance products.

Applicants also represent that during the past two years the share of the group legal fees paid by IDS Life amounts to significantly less than 1% of the firm's revenues. In addition, the fees received by Sutherland for legal services to the groups during the past two years were not material when compared to the total revenues of Sutherland during that period. Applicants currently anticipate that for the foreseeable future the fees received by the firm for legal services to the groups will not be material when compared to the firm's total revenues and the share of the group legal fees paid by IDS Life will not vary substantially from the current level.

Applicants represent that Ms. Jones was selected by a committee of directors composed exclusively of persons who are not "interested persons", and that the members of this committee and the other directors of the Funds regard her to be a person of integrity who is thoroughly knowledgeable of investment company matters and believe she is highly qualified to exercise the independent judgment needed to represent best the interests of shareholders of the Funds.

Applicants submit that the requested exemptive order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 85-12566 Filed 5-23-85; 8:45 am]

BILLING CODE 9010-01-M

[Release No. IC-14527; File No. 812-6067]

**Integrated Capital Appreciation Fund, Inc.; Application and Opportunity for Hearing**

May 17, 1985.

Notice is hereby given that Integrated Capital Appreciation Fund, Inc., 666 Third Avenue, New York, New York 10017 ("Applicant"), filed an application on March 4, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and Rule 22c-1 thereunder, to permit Applicant to assess a contingent deferred sales charge on certain redemptions of its shares and waive the contingent deferred sales charge with respect to certain types of redemptions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicant is a diversified, open-end management investment company organized as a corporation under Maryland state law on July 20, 1983. Applicant filed with the Commission a notification of registration and a registration statement under the Act and a registration statement with respect to its initial shares of common stock under the Securities Act of 1933. Integrated Assets Management Corp., a Delaware corporation and a majority-owned subsidiary of Integrated Resources, Inc., will serve as investment adviser to Applicant. Integrated Resources Equity Corporation (the "Distributor"), a wholly-owned subsidiary of Integrated Resources, Inc., will act as distributor of the Fund's shares and will receive the proceeds of the contingent deferred sales charge.

Applicant represents that the contingent deferred sales charge would be imposed if an investor redeems an amount which causes the current value of the investor's shares of Applicant to fall below the total dollar amount of purchase payments made by the investor during the preceding five years.

No contingent deferred sales charge is imposed to the extent that the net asset value of the shares redeemed does not exceed (i) the current net asset value of shares purchased more than five years prior to the redemption, plus (ii) the current net asset value of shares purchased through reinvestment of dividends or distributions, plus (iii) increases in the net asset value of the investor's shares above the total amount of payments for the purchase of Applicant's shares made during the preceding five years. Applicant states that at no time will such charge exceed 5% of the aggregate purchase payments made by the investor. Applicant proposes to waive the contingent deferred sales charge on certain redemptions described below.

According to the application, when determining the applicability of a contingent deferred sales charge to each redemption, shares will be redeemed first whose value equals the amount of any increase in the net asset value of the investor's shares above the amount of the total payments for the purchase of shares within the last five years. In the event the redemption amount exceeds such increase in value, the next portion of the amount redeemed will be the amount which represents the net asset value of the investor's shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Any portion of the amount redeemed which exceeds an amount which represents both such increase in value and the value of shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions will be subject to a contingent deferred sales charge.

Where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed. During the first years after purchase, the charge would be 5 percent of the amount redeemed. That amount would drop by 1 percent per year until 5 years thereafter, at which time no charge would be imposed upon redemption. The amount of the contingent deferred sales charge (if any) is calculated by determining the date the purchase payment, which is the source of the shares to be redeemed, was made and applying the appropriate percentage to the amount of the redemption subject to the charge.

Applicant proposes to finance its own distribution expenses pursuant to a plan adopted under Rule 12b-1 under the Act (the "Plan"). Under the proposed Plan,

Applicant will pay the Distributor compensation accrued daily and paid monthly as reimbursement for the expenses borne and services provided by the Distributor in connection with the offering of Applicant's shares. The Distributor also will receive the proceeds of the contingent deferred sales charge upon any redemption. Applicant states that, in their review of the Plan pursuant to Rule 12b-1, the Board of Directors will consider the use by the Distributor of revenues raised by the contingent deferred sales charge.

Applicant believes that where amounts attributable to purchase payments are redeemed (and thus no longer contribute to the annual distribution charge) it is fair to impose on the withdrawing shareholder a lump-sum payment reflecting approximately the amount of distribution expense which has not been recovered through payments by the Fund. Thus, the amount, computation and timing of the contingent deferred sales charge are designed to promote fair treatment of all shareholders, while permitting the Fund to offer investors the advantage of having purchase payments fully invested on their behalf immediately.

Applicant proposes to waive the contingent deferred sales charge with respect to the following redemptions of Applicant's shares: (i) Redemptions following the death or disability (as defined in section 72(m)(7) of the Internal Revenue Code) of a shareholder, (ii) redemptions in connection with certain distributions under a tax-deferred retirement plan, IRA, Keogh, or custodial account pursuant to section 403(b) of the Internal Revenue Code or redemptions resulting from the tax-free return of an excess contribution to an IRA, and (iii) redemptions of shares purchased for personal investment purposes by officers, directors and employees of Integrated Resources, Inc. and its subsidiaries, and registered representatives to the Distributor and their employees.

Applicant believes that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the imposition of the contingent deferred charge is fair and is in the best interests of its shareholders. The proposed transaction permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of the shares. Moreover, because the

contingent deferred sales charge applies only to redemptions of amounts representing purchase payments, it does not apply to increases in the value of an investor's account through increases in net asset value per share, or to amounts representing reinvestment of distributions or dividends. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or unfairly discriminate among shareholders or purchasers. Additionally, Applicant represents that it will fully disclose all of the waiver provisions in its prospectus.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-12564 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14525; File No. 812-5850]

#### Application and Opportunity for Hearing; The Volunteer State Life Insurance Co. et al.

May 17, 1985.

Notice is hereby given that The Volunteer State Life Insurance Company (the "Company"), Chubb/Volunteer Separate Account A of the Company ("Account"), Chubb Investment Advisory Corporation, and Chubb Securities Corporation ("Security Sales"), referred to collectively herein as "Applicants", 832 Georgia Avenue, Chattanooga, Tennessee 37402, filed an application on March 20, 1985, and an amendment thereto on May 15, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting

Applicants and certain transactions from sections 2(a)(35), 26(a)(1), 26(a)(2)(C), 27(a)(1), 27(a)(2), 27(h)(1), 27(h)(2), and 27(h)(4) of the Act, and Rule 6e-3(T)(b)(1), (b)(13)(i)(B), (b)(13)(iii), (c)(1), (c)(2), (c)(4), and (c)(7) to the extent necessary, as described in the application. Applicants assert that, for the reasons specified as the grounds for the requests, the requested exemptions involve technical and unforeseen matters under Rule 6e-3(T), the exemptive rule under the Act for separate accounts offering flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

The Company is a stock life insurance company organized under the laws of the State of Tennessee and is admitted to do business in 45 other jurisdictions with applications pending in other states. The Company is the sponsor-depositor for the Account. The Account, a segregated investment "separate account" of the Company, is registered under the Act as a unit investment trust. The Account meets all conditions set forth in section (a) of Rule 6e-3(T) under the Act and was established for the purpose of funding flexible premium variable life insurance contracts ("the Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T). Applicants state that they are relying on the provisions of rule 6e-3(T) and have elected to be governed by paragraph (b)(13)(i)(B) thereunder. Securities Sales, a registered broker-dealer, is the principal underwriter of the Contracts. Each investment subdivision of the Account invests exclusively in shares of a particular portfolio of the Chubb American Fund, Inc. ("the Fund"). The Fund is registered under the Act as an open-end, diversified management investment company and is incorporated under the laws of the State of Maryland as a series type company. The Fund currently has three classes of capital stock (each consisting of one portfolio). Chubb Investment Advisory Corporation is the investment adviser of the Fund.

Applicants state that the Contracts are designed to give the contract owner maximum flexibility by permitting him to vary the frequency and amount of purchase payments and to increase or decrease the specified amount (i.e., the amount of insurance under the Contract). At the contractowner's election, the death benefit will be either

"Option 1", the greater of the specified amount or the cash value multiplied by the "corridor percentage" required by the Internal Revenue Code of 1954, as amended ("Code") or "Option 2", the greater of the specified amount plus cash value or cash value multiplied by the "corridor percentage." Optional incidental benefits are available by Riders to the Contract. The cash value will reflect the amount and frequency of payments, the investment experience of the Account, any partial surrender, any loans, and any charges. According to the application, the Contract will remain in force, without regard to the contractowner making purchase payments, unless the cash value reduced by any outstanding debt is insufficient to cover the monthly deduction, discussed below, and a grace period expires without a sufficient payment.

Applicants state that cash value is reduced on each monthly anniversary by a monthly deduction. The monthly deduction is composed of: (1) The charge for the cost of insurance for standard or substandard risk classifications and the charges for the purchase of incidental insurance benefits purchased by rider. Cost of insurance charges will be based on current assumptions and guaranteed not to exceed the maximum charges based on the Commissioners 1958 Standard Ordinary Mortality Table ("1958 CSO Table"), with interest at 4% compounded yearly; (2) a monthly administrative charge at the rate of \$7.25 in the first year and \$4.00 in each year thereafter; and (3) a monthly expense charge of \$.20 per \$1000 of the initial Specified Amount and of any increase in Specified Amount (chargeable only in the first 12 months of the Contract and in the first 12 months following the increase, respectively). The monthly administrative charge and the monthly expense charge are asserted to be reasonable in amount and not expected to produce a profit. A mortality and expense risk charge equal to an annual rate of .60% of the net assets of the Account will be imposed and the value of the net assets of the Account will reflect the investment advisory fee and other expenses incurred by the Fund. Applicants further state that charges of 9% and 2.5% will be deducted from each payment for sales and distribution expenses and for state premium taxes, respectively. In addition, a transfer charge equal to the lesser of \$25 or 10% of the amount transferred will be assessed. Finally, a partial surrender charge equal to the lesser of \$25 or 2% of the amount requested will be deducted from amounts paid.

## 1. CSO Mortality Table

Applicants request an exemption from section 2(a)(35) of the Act and from paragraphs (b)(1), (b)(13)(i)(B), and (c)(4)(ii) of Rule 6e-3(T) to the extent that paragraph (c)(4)(ii) prescribes that the amount excluded from sales load for cost of insurance is limited to the cost of insurance for the period based on the 1980 CSO Mortality Table and net interest at the annual effective rate of the greater 5% or the rate guaranteed at issuance of the contract. Applicants seek an exemption to the extent necessary to permit the exclusion from sales load of amounts deducted for the actual cost of insurance charges under the Contract, which for standard underwriting risk classes is guaranteed never to exceed amounts based upon the 1958 CSO Mortality Table and an annual effective interest rate of 4 percent. Applicants state that any portion of the cost of insurance charge in excess of a charge based on the 1980 CSO Mortality Table would be deemed sales load. Thus, unless contractowners made sufficient minimum payments in advance of, or coincident with, each monthly cost of insurance deduction, the sales load technically could exceed 9% of actual payments, and might result in a violation of the rule. Applicants reiterate that sales load on the Contracts is based on payments made, rather than guidelines annual payments and therefore, the sales load can at no time exceed 9% of payments made to date. They argue that requiring use of the 1958 CSO Mortality Table would force the Company to lower its cost of insurance rates below current industry norms.

## 2. Definition of Payments

Applicants request an exemption from paragraph (c)(7) of Rule 6e-3(T) to the extent that paragraph defines "payment" for purposes of the sales load provisions of the Act and the rule (exemptions are also specifically requested from sections 2(a)(35), 27(a)(1), 27(a)(2), 27(h)(1), 27(h)(2), and 27(h)(4) of the Act and Rules 6e-3(T)(b)(1), (b)(13)(i)(B), and (c)(4) thereunder) by excluding the portion of gross payments charged for substandard risks, incidental insurance benefits, and interest when payments are made more frequently than annually (together, "extra charges"). Applicants note that this aspect of the definition of "payment" parallels paragraph (c)(7) of Rule 6e-2. Applicants state, however, that the Contracts differ significantly from scheduled contracts, in that extra charges are deducted from the cash value of the Contract rather than directly from payments. In fact, no

scheduled payments are required under the Contracts; contractowners have the flexibility to determine both the timing and amount of payments made. Applicants represent that this procedure, for the reasons explained in the application, makes it impossible to predetermine the amount of the charges for substandard risk classification and incidental insurance benefits and duration of insurance coverage attributable to any particular payment. Therefore, they assert, it creates a technical problem of compliance with Rule 6e-3(T).

Applicants state that under the Contracts, the gross payments (less sales load and premium tax) represent amounts invested on behalf of contractowners in the Account. Applicants assert that, therefore, each purchaser making a given amount of payment has the same percentage and amount of sales load and premium tax deducted from the payment and the same amount allocated to the Account. They further assert that the fact that different amounts would subsequently be deducted according to risk classification and incidental coverage does not constitute disparate treatment. Applicants also assert that the basic differences between scheduled-payment and flexible-payment variable life insurance contracts make it inappropriate to apply the definition of "payment" in Rule 6e-3(T)(c)(7) to the Contract. In this regard, Applicants assert that the requested relief provides parity of treatment among the different forms of variable life insurance contracts (i.e., scheduled and flexible), and does not result in disparate treatment between contractowners of standard and substandard risk classifications or between those with and without incidental benefits.

Finally, Applicants represent that by now permitting them to compute sales load based upon gross payments rather than payments as defined in paragraph (c)(7), the Commission would not be permitting greater amounts to be deducted than are permitted under Rule 6e-2. Applicants assert that the Contract, in fact, probably can not be regulated on an equivalent basis with scheduled contracts without this exemption relief because of the difficulty of attribution of these extra charges to particular purchase payments. Applicants note that under the Contracts, when each gross payment is received it will not be possible prospectively to attribute a portion of it to the extra charges deducted from cash value since the timing and amount of actual gross payments made will

necessarily be independent of the timing and amount of these monthly charges against cash value. Therefore, Applicants believe this exemption is necessary and appropriate and consistent with the policy and provisions of the Act.

## 3. Deduction of Insurance Charges from Cash Value

Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit deductions from the separate account for any extra charges. Rule 6e-3(T) provides an exemption from these sections to permit deductions from the separate account for the cost of insurance (paragraph (b)(13)(iii)(E)). Although Applicants believe that the exemption provided for "cost of insurance" should be broad enough to cover deductions for all costs of insurance charges, including substandard cost of insurance charges and charges for incidental insurance benefits, Rule 6e-3(T), nevertheless, does not literally include these items in this exemption.

Applicants state that under a schedule contract, the extra charges are deducted from the scheduled payments. However, under a flexible contract, contractowners have the ability to determine the timing and amount of payments therefore, the extra charges are deducted directly from the contractowner's cash value so long as it remains sufficient. Applicants assert that, consequently, their proposal benefits contractowners in that charges are deducted on the basis of costs at the time rather than on a higher "level premium" basis and so continue "working" for the benefit of the contractowner until they are deducted from the separate account.

## 4. Funding by the General Account

The Contracts provide for the allocation of net payments to Volunteer's General Account, the Separate Account or both and for the transfer of cash value between two. Without agreeing that exemptive relief is required, Applicants are requesting relief from Rule 6e-3(T)(c)(1). Applicants assert that the Rule does not require that the contract be exclusively funded by a separate account or provide for a cash value that exclusively varies to reflect the investment experience of a separate account and that prior Commission action in declaring certain variable life and annuity registration statement is consistent with this requested relief. However, Applicants have been advised by the Commission staff, and

understand, that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission concerning the propriety or impropriety of registration or non-registration of either interests in the General Account as securities under the 1933 Act or the General Account as an investment company under the Act.

#### 5. Definition of "Incidental Insurance Benefits"

Applicants request exemption from Rule 6e-3(T)(c)(2) to the extent that the disability waiver of premium insurance ("Rider") may be deemed not to meet the definition of "incidental insurance benefits" in that section. The Rider provides that, in the event of disability of the insured, as defined therein, Volunteer will waive the Monthly Deduction during the period of disability. The Monthly Deduction can vary with the investment experience of the Separate Account in certain respect. However, Applicants state that the benefits, *i.e.*, the waiver of the Monthly Deduction, is a predominantly fixed benefit. Applicants represent that the Monthly Deduction is waived regardless of how much the cash value and the amount at risk vary. The cost to the contractowner following commencement of the benefit does not vary based on the amount of the Monthly Deduction that Volunteer waives. Thus, Applicants submit that the Rider should be treated as "fixed" for purposes of Rule 6e-3(T). Applicants, therefore, request relief from Rule 6e-3(T)(c)(2), to the extent necessary, to permit the payment for the Rider to not be deemed "sales load."

#### 6. Other

Finally, Applicants represent that if and to the extent that Rule 6e-3(T) is amended to provide relief in terms different from any relief granted to them by order, they shall take all necessary steps to comply with the final Rule 6e-3 with respect to any Contract issued after the expiration of the transitional period provided by the Commission in its release adopting Rule 6e-3(T).

For the reasons stated above, Applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 11, 1985 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any of fact or law that are

disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-12565 Filed 5-23-85; 9:45 am]

BILLING CODE 8010-01-M

[Release No. 22050; File No. SR-CBOE-85-16]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change Relating to the Retail Automatic Execution System in Options on Over-the-Counter Stocks

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Text of the Proposed Rule Change

This will describe a proposed pilot program by the Exchange concerning a retail automatic execution system ("RAES") in classes of options on over-the-counter stocks. The pilot is scheduled to begin when options on over-the-counter stocks are opened for trading and to continue for six months.

Firms currently on the Exchange's Order Support System ("OSS") will automatically be on RAES for purposes of routing small public customer market orders into the RAES system. Firms on OSS have the ability to go on and off OSS at will. Firms not on OSS that wish to participate in the pilot will be given access to RAES from terminals at their booths on the floor.

When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time

of the order's entry to the system. A buy order will pay the offer; a sell order will sell the bid. A participating market-maker will be designated as contrabroker on the trade.

It is possible that the prevailing market bid or offer may be equal to the best bid or offer on the Exchange's book. In this circumstance, a transaction can take place at the price of a booked order. In no case will the RAES order become executed at a price better than the best bid or offer on the book because the prevailing market must be no better than the best bid or offer on the book. Thus, a RAES sell order cannot be filled at a price lower than the best book bid, nor can a RAES buy order be filled at a price higher than the best book offer.

Market-makers may sign on and off the system at terminals which will be located at the trading posts where options on over-the-counter stocks will be located. At the end of the day, all signed-on market-makers are removed from the system, and each morning the sign on process begins again.

Participating market-makers will be assigned by the system on a rotating basis, with the first market-maker selected at random from the list of signed-on market-makers. Participating market-makers are obligated to trade at the displayed market quote at the time an order enters the system. Exchange rules shall not apply to the extent that they are inconsistent with the terms of the pilot, including but not limited to Rule 6.45. (Priority of Bids and Offers), Rule 6.43 (Manner of Bidding and Offering), and Rule 8.1 (Market-Maker Defined). Position and exercise limits will remain in effect for RAES transactions. RAES orders will count toward fulfillment of the in-person requirement of Rule 8.7.

All participants will be informed of trades immediately upon execution. A fill report will be generated to the firm at the firm's point of entry into the system (*i.e.*, either its branch office or floor booth). A trade acknowledgement ticket ("TAT") will be printed at locations in trading posts where options on over-the-counter stocks are located, for delivery to market-makers. TAT's for market-makers not present at the trading post will be set aside for pickup. A log of all transactions will be available throughout the day for review by participants. Audit reports will be sent to the Exchange's Regulatory Services Division.

Eligible orders must be market orders for ten or fewer contracts, on series placed on the system. The Exchange will have discretion to place on the system

such series in the eligible classes of options as it determines is appropriate. Announcements concerning eligible series will be made daily by the Exchange in the same way new strike prices are currently announced, that is, by memoranda and taped telephone messages.

Each day the system is available, an Order Book Official or his representative will start the system, after quotes in the eligible series have been updated following opening rotation. If no market-makers sign on, the system will not be started. If the system is or becomes unavailable, for any reason, eligible orders will be handled as they are handled currently in other equity options classes.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable the Exchange to extend its RAES experiment in S&P 100 Index options ("OEX") to options on over-the-counter stocks. By this pilot, the Exchange hopes to be able to better assess the system's effects and capabilities in this new portion of the options market. RAES in OEX has proven to benefit public customers, market-makers, floor brokers and member firms. It has reduced the amount of paper entering the OEX trading crowd, has improved fill-reporting turnaround time, and has offered a guaranteed price at the displayed market. RAES has also aided in timeliness of OEX price reports, an accuracy of the OEX trade-match data and last-sale audit trail. It is hoped that these same benefits will accrue in this new pilot.

The limited exception to book priority for RAES is justified due to the efficiencies RAES offers, and the benefit of firm markets to public customers via RAES orders. The Commission has regularly recognized exceptions to existing priority rules where significant benefits are obtained thereby.

Moreover, based on the Commission's deliberations of April 18, 1985, it appears that the National Association of Securities Dealers ("NASD") will be permitted to trade options on over-the-counter stocks in a system which offers no public order book. The NASD proposal also includes an automatic execution program, for orders of up to three option contracts, based solely on the quotes entered by NASD members, without regard to any other customers orders in the NASD system. NASD's automatic execution system will also not execute all orders at the same price, but rather at the prevailing bid or offer of the next available market-maker, in descending order starting with the best market. This system may result in disparate pricing both on contemporaneous orders in the automatic system and on contemporaneous orders handled manually. Finally, the competition which the Commission envisions regarding options on over-the-counter stocks will permit investors a choice of markets, all the more reason to allow diverse market environments which investors may select for their orders.

In light of the foregoing, the Exchange believes that the use of RAES in options on over-the-counter stocks is consistent with the provisions of the Securities Exchange Act of 1934, and in particular, Section 6(b)(5), in that it will protect the public interest and perfect market efficiency.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On April 11, 1985, the Exchange's membership voted, *inter alia*, in favor of allowing the Exchange to extend RAES to options on over-the-counter stocks.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-12567 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22044; SR-Phlx-84-28, SR-Phlx-85-11]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing of and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto; Order Approving Proposed Rule Change

On November 7, 1984, the Philadelphia Stock Exchange, Incorporated ("Phlx") submitted copies of a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to trade options on the "National Over-the-Counter ("OTC") Index" ("National OTC Index"), a capitalization-weighted index composed of the 100 most highly capitalized National Market System stocks.<sup>1</sup>

<sup>1</sup>File No. SR-Phlx-84-28, noticed in Securities Exchange Act Release No. 21576, January 18, 1985, 50 FR 3445.

On May 8, 1985, the Commission issued a release that, among other things, described and discussed the proposed rule change, and indicated that the proposed rule change would be consistent with the Act if the Phlx eliminated the barriers in its rules to the multiple trading of OTC index options.<sup>2</sup> In that release, the Commission also indicated that approval of Phlx's proposal to trade options on certain individual OTC stocks<sup>3</sup> would require the amendment of Phlx's rules that prohibit the multiple trading between the Phlx and the OTC market of options on individual OTC stocks.

On May 1, 1985,<sup>4</sup> Phlx submitted a proposed rule change pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder to amend its off-board trading rules. The Phlx subsequently amended the proposed rule change on May 13, 1985, to make clear that its rule would allow transactions through the facilities of NASDAQ in options admitted to trading on the Exchange and NASDAQ and relating to (1) any stock that was traded through NASDAQ when standard options trading on the stock commenced; and (2) any index composed entirely of OTC stocks.<sup>5</sup> The intent of this Phlx rule change is to comply with the Commission decision to require Phlx to remove its barriers to the multiple trading of options on individual OTC stocks and OTC indexes as a precondition to approval of its proposals to trade options on OTC stocks and on the National OTC Index.<sup>6</sup>

<sup>2</sup> Securities Exchange Act Release No. 22026, May 8, 1985 ("OTC Options Release").

<sup>3</sup> File No. SR-Phlx-83-27, noticed in Securities Exchange Act Release No. 20890, February 23, 1984, 49 FR 7684.

<sup>4</sup> The Phlx was able to submit this proposed rule change, prior to publication of the OTC Options Release, because the Commission reached the decisions announced in that release at a public meeting held on April 16, 1985.

<sup>5</sup> Amendment No. 1 thus also makes clear that Phlx Rule 132 will be applied to OTC stocks that list on an exchange after options trading on the stock commences. See OTC Options Release, *supra* note 2, at n.214.

<sup>6</sup> In this connection, the Commission notes that the National Association of Securities Dealers ("NASD") also has proposed to trade an option on an index composed entirely of National Market System ("NMS") stocks. File Nos. SR-NASD-80-10 and 85-05, also discussed in the OTC Options Release, *id.* While the NASD's proposed index is not identical to Phlx's and thus does not directly raise a multiple trading issue, the Commission indicated in the OTC Options Release that the multiple trading of index options among exchanges and the OTC market would be appropriate. For this reason, the Commission required Phlx to amend its rules to eliminate its barriers to the multiple trading of OTC index options.

The Phlx proposal to amend its rules to allow multiple trading between the Phlx and the OTC market of options on individual OTC stocks and OTC indexes listed on the Phlx has not been noticed previously. Interested persons, therefore, are invited to submit comments concerning the proposed rule change June 14, 1985. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 5th Street NW., Washington, D.C. 20549. References should be made to File No. SR-Phlx-85-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also will be available at the Phlx.

The Commission finds that the proposed rule change contained in File No. SR-Phlx-85-11 will eliminate the barriers in the Phlx's Rule 132 to multiple trading between the Phlx and the OTC market of options on individual OTC stocks and OTC indexes.

With this amendment to Phlx's rules, and for the reasons discussed in the OTC Options Release, the Commission finds that the proposal to trade the National OTC Index option (File No. SR-Phlx-84-28) also is consistent with the Act.<sup>7</sup> As indicated in the OTC Options Release, the Phlx already has submitted an adequate plan for surveillance of this index option.

The Commission finds good cause for approving the proposed rule change contained in File No. SR-Phlx-85-11 prior to the thirtieth day after the date of publication of notice of filing thereof in that the Commission previously has raised the question of eliminating restrictions to the multiple trading of

<sup>7</sup> In this connection, the Commission notes that the amendments to Rule 12a-6 under the Act that, among other things, remove that rule's bar on the exchange trading of OTC index options (See Securities Exchange Act Release No. 20423, November 29, 1983, 48 FR 54537) became effective on May 15, 1985. See Securities Exchange Act Release No. 22025, May 8, 1985. The Commission notes that, while it is also approving Phlx's proposal to eliminate the barriers to the multiple trading of options on individual OTC stocks, it is not at this time approving Phlx's proposal to trade options on individual OTC stocks.

OTC options products;<sup>8</sup> the proposed rule change is consistent with and in furtherance of the Commission's determination made at its April 16, 1985 meeting; the proposed rule change relieves a restriction and is essentially exemptive in nature;<sup>9</sup> and the Phlx desires and has made operational preparations to commence trading in its National OTC index option by May 17, 1985.<sup>10</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley L. Hollis,

Assistant Secretary.

[FR Doc. 85-12568 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22053; SR-Amex-85-11]

#### Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Approving Proposed Rule Change on Accelerated Basis

May 17, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on April 25, 1985, the American

<sup>8</sup> See Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291.

<sup>9</sup> Cf. U.S.C. 553(d)(1)(1982).

<sup>10</sup> The NASD has requested that the Commission delay approval of Phlx's index until such time as the NASD can arrange for its membership in and submission of data to, the Options Clearing Corporation ("OCC") as well as the Options Price Reporting Authority ("OPRA") in order to assure "competitive fairness."

See letter from John T. Wall, Executive Vice-President, Research and Marketing Services, NASD, to Richard G. Ketchum, Director, Division of Market Regulations, dated May 9, 1985. The Commission had determined not to delay its approval for several reasons. First, as described in the OTC Options Release, at pp. 116-18, the Commission does not believe, in general, that, absent of a new product. Second, the Commission does not believe that a near-term start up of trading by Phlx is unfair to the NASD. In this regard, the NASD on several occasions has been advised by the Commission staff that the Commission would be willing to consider its proposed index product separate from its individual OTC options proposal. Hence, there has been no regulatory impediment to early start up of trading in the NASD's completing index option. In addition, contrary to the NASD's suggestion, the Commission is not persuaded that, had the NASD expeditiously pursued OCC membership and OPRA reporting, it would not be in a position to commence trading in the near-term. Finally, the Phlx proposal was published for comment on January 25, 1985, and the comment period expired on February 24, 1985. Only on May 9, fully three weeks following the Commission meeting to discuss OTC options, did the NASD raise these concerns, once it became clear that a competitor was prepared to commence trading.

Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

On April 1, 1985, the SEC approved an amendment to the Exchange's schedule of approved member firm charges for handling proxy solicitations (Rule 576), to permit the adding of a "surcharge" by member firms to recoup start-up costs associated with the new SEC Shareholder Identification Rule.<sup>1</sup> The Exchange is now proposing an additional amendment to the Rule to clarify the date of applicability of the proxy surcharge.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change**

###### **(1) Purpose**

On February 22, 1985, the Exchange submitted a proposed rule change to the SEC to amend its schedule of approved member firm charges for handling proxy solicitations (Rule 576), to permit the adding of a "surcharge" by member firms to recoup start-up costs associated with the new SEC Shareholders Identification Rule. The proposal called for a surcharge on issuers of \$.20 for each set of proxy materials processed by member firms during the next two annual proxy seasons. At the time of the rule filing, the annual meeting proxy season had not actively commenced and it was anticipated that the proposed rule change would be approved by the Commission in time to apply it to the

millions of proxies traditionally forwarded during March for annual meetings to be held during the peak of the proxy season, April and May.

After a review by the SEC staff, it was agreed that the Commission would approve the first stage of the proposed surcharge, but would request further supporting evidence of anticipated start-up costs before acting upon the proposed second stage. However, by the time the Commission approved the proposed rule change (March 28 in the case of the NYSE<sup>2</sup> and April 1 for the Amex and NASD<sup>3</sup>), broker-dealers had already passed the peak mailing period for proxies, the latter two weeks of March. As a result, the amount reimbursed to broker-dealers will be significantly reduced unless the surcharge is assessed on the basis of annual meetings held after the SEC approval date, rather than on the basis of proxies mailed after that date. To accommodate dual member firms, it is requested that March 28 be used as the record date for purposes of the Amex rule change.

###### **(2) Basis**

The proposed amendment to Rule 576 is consistent with section 6(b) of the Exchange Act in general and furthers the objectives of section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

##### **B. Self-Regulatory Organization's Statement on Burden on Competition**

The proposed rule change will have no impact on competition.

##### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Amex requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Amex believes that the efficiencies and benefits resulting from the proposed rule change will directly benefit securities holders and its member organizations as soon as it has

been approved. Therefore, the Amex has requested accelerated approval in order to make these benefits available as soon as possible.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Amex member organizations could begin immediately to impose on issuers a surcharge for processing the issuers' proxy materials in order to recoup the member organizations' start-up costs associated with the Commission's Shareholder Identification Rule.<sup>4</sup>

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

<sup>4</sup> A similar rule change by the New York Stock Exchange, Inc. ("NYSE") (SR-NYSE-85-16) was likewise given accelerated approval by the Commission. That NYSE rule change supplemented the NYSE rule change amending NYSE Rules 451 and 465 (SR-NYSE-85-2), and permitted earlier collection by NYSE member organizations of the proxy surcharge, which is designed to cover start-up and overhead costs associated with implementing Rule 14b-1(c) under the Act.

<sup>2</sup> See Securities Exchange Act Release No. 21900, March 28, 1985; 50 FR 13297, April 3, 1985 (SR-NYSE-85-2).

<sup>3</sup> See Securities Exchange Act Release No. 21915, April 1, 1985; 50 FR 14069, April 9, 1985 (SR-Amex-85-2); SR-NASD-85-7).

<sup>1</sup> See Rule 14b-1(c) under the Act.

proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 85-12632 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22051; File No. SR-Amex-85-14]

**Self-Regulatory Organization;  
Proposed Rule Change by American  
Stock Exchange, Inc.; Relating to  
Schedule of Suggested Rates That  
Member Organizations May Charge  
Issuers in Connection With Handling  
Proxy Material**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The American Stock Exchange, Inc. is proposing to amend Rule 576 to increase by 10¢ the suggested rates which member organizations may charge for mailing follow-up proxy materials and annual reports to stockholders.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's  
Statement of the Purpose of, and the  
Statutory Basis for, the Proposed Rule  
Change**

**(1) Purpose**

Member organizations acting as custodian for clients' securities are required to transmit proxy soliciting material and financial reports to beneficial owners, provided the issuer furnishes the material and agrees to reimburse the firm for reasonable expenses plus postage. To eliminate the need for annual negotiations between issuers and brokers with respect to the appropriate fees to be charged, the Amex (and NYSE) have published a schedule of suggested rates of reimbursement since 1952.<sup>1</sup>

The Exchange is proposing to change this schedule by increasing by 10¢ the suggested rates for mailing follow-up proxy materials and annual reports to an issuer's stockholders. This rate adjustment would raise the cost to listed companies for sending follow-up proxy solicitation material from the present 30¢ per set to 40¢ per set if mailed to all stockholders, and from 50¢ per set to 60¢ per set if mailed selectively to stockholders who did not reply to the initial solicitation. The cost for mailing annual reports would similarly be raised from the current 10¢ per shareholder to 20¢, and be made subject to a \$3.00 minimum service charge per issuer.

The rate increases are intended to allow member organizations to recoup the costs associated with performing these services. In this connection, it should be noted that there has not been any modification to the suggested follow-up rate since 1980, or any increase in the rate for mailing annual reports since 1952.

The proposed rate increases were endorsed by the Exchange's Listed Company Advisory Committee.

**(2) Basis**

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act in general, and with section 6(b)(4), in particular, in that it will provide for the equitable allocation of reasonable charges among members and issuers.

**B. Self-Regulatory Organization's  
Statement on Burden on Competition**

The proposed rule change will conform the Amex and NYSE approved schedules of suggested rates, thereby enabling sole Amex member organizations to be reimbursed at the same rates as firms which are also members of the NYSE. This will eliminate a burden on competition which would otherwise exist.

<sup>1</sup>Member firms remain free to charge lower rates and may charge rates higher than in the published schedule with prior notice and consent of the issuer.

**C. Self-Regulatory Organization's  
Statement on Comments on the  
Proposed Rule Change Received From  
Members, Participants or Others**

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the  
Proposed Rule Change and Timing for  
Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by June 14, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 20, 1985.

Shirley Hollis,  
Assistant Secretary.

[FR Doc. 85-12629 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22045; File No. SR-CBOE-85-19]

**Self-Regulatory Organizations;  
Chicago Board Options Exchange,  
Incorporated; Notice of Filing and  
Immediate Effectiveness of Proposed  
Rule Change Relating to a RAES/OEX  
Fee Reduction**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 3, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Text of the Proposed Rule Change**

**RAES/Fee Reduction**

Effective May 1, 1985, the Retail Automatic Execution System fee in OEX is reduced to .25 per contract.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

**(A) Procedures of the Self-Regulatory  
Organization**

The proposed fee reduction is for the purpose of encouraging the use of the Retail Automatic Execution System (RAES) in S&P 100 Index Options (OEX). RAES has benefitted market participants by, for example, reducing the amount of paper entering the OEX trading crowd, improving fill reporting times, and offering a guaranteed price at the displayed market. The statutory basis for this rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that the rule change protects investors and public interest.

**(B) Self-Regulatory Organization's  
Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change creates any

burden on competition not necessary or appropriate under the Act.

**(C) Self-Regulatory Organization's  
Statement on Comments on the  
Proposed Rule Change Received From  
Members, Participants or Others**

Formal comments were neither solicited nor received.

**III. Date of Effectiveness of the  
Proposed Rule Change and Timing for  
Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the CBOE. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 17, 1985.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 12630 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34 22056; File No. SR-PHLX 85-10]

**Self-Regulatory Organization;  
Proposed Rule Change by Philadelphia  
Stock Exchange, Inc. Relating to  
Options on the European Currency  
Unit**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 12, 1985,<sup>1</sup> Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to trade options on the European Currency Unit ("ECU"). The ECU contract will be traded pursuant to PHLX rules which govern the trading of foreign currency options. ECU option specifications will be as follows:

**Contract Size—62,500 units**

(At today's value of \$.71 per ECU, the contract value in dollar terms would be approximately \$44,375).

**Strike Price Intervals—1 cent** (For example, if the ECU is valued at \$.71, strike prices would be .70, .71 and .72).

**Expiration months—March, June, September, and December.**

**Premium Quotations—cents per unit—currency—**

.01 = \$.25

.1 = \$.250

1.0 = \$.2500

**Minimum Premium—.01 cents per unit of currency or \$5.00 Bid/Offer Differentials—**

.40 or less = .04 = \$.2500

.41 to 1.60 = .08 = \$.5000

More than 1.6 = .16 = \$1.0000

In order to list options on the ECU, it is necessary to amend PHLX Rules as follows:

1000(b)(13)

1000(b)(15)

<sup>1</sup> The Exchange has amended the proposed rule change twice subsequent to its original filing on April 12, 1985. Amendment No. 1, submitted on April 22, 1985, states that the Board of Governors of the Exchange approved the proposed rule change on April 16, 1985. Amendment No. 2, filed on May 3, 1985, changed the size of the proposed ECU contract from 50,000 to 62,500 units.

1009(d)  
1014(c)(ii)  
1033(b)(ii)  
1034(ii)

(Brackets indicate deletions; italic indicates additions.)

**Rule 1000 Applicability, Definitions and References—**

(a) No change.

(b) 1 through 12—No change.

(b)(13) Foreign Currency—The term "foreign currency" means the standard unit of the official medium of exchange of a sovereign government other than the United States Government (e.g., the British pound, the German mark, the Swiss franc, the Canadian dollar, the French franc, or the Japanese yen.) *or the official medium of exchange of the European Economic Community's European Monetary System.*

(b)(14) No change.

(b)(15) Unit of Underlying Foreign Currency—The term "unit of underlying foreign currency" means a single unit of the foreign currency which the Options Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of a foreign currency option contract (e.g., one British pound, one German mark, one Swiss franc, one Canadian dollar, one French franc, [or] one Japanese yen, *or one European Currency Unit*).

**Rule 1009 Approval of Underlying Stocks or Underlying Foreign Currencies—**

(a) No change.

(b) No change.

(c) No change.

(d) The British pound, the German mark, the Swiss franc, the Canadian dollar, the French franc, [and] the Japanese yen, *and the European Currency Unit* each may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. In the event that any of the sovereign governments *or the European Economic Community's European Monetary System* issuing any of the above-mentioned currencies should issue a new currency intended to replace one of the above-mentioned currencies as the standard unit of the official medium of exchange of such government, such new currency also may be approved as an underlying foreign currency for options

transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors, and options trading in such new currency may occur simultaneously with options trading in any of the above-mentioned currencies; provided, however, that the Exchange shall withdraw its approval of options transactions in the currency which is intended to be replaced by such new currency as expeditiously as it deems consistent with the maintenance of a fair and orderly market or the protection of investors.

**Rule 1014 Obligations and Restriction's Applicable to Specialist's and Registered Options Traders**

(a) No change.

(b) No change.

(c)(i) No change.

(c)(ii) Options on Foreign Currencies—In the case of option contracts on the British pound, bidding and/or offering so as to create differences of no more than \$.0020 between the bid and the offer for each option contract for which the bid is \$.0200 or less, no more than \$.0040 where the bid is more than \$.0200 but does not exceed \$.0800, and no more than \$.0060 where the bid is more than \$.0800.

In the case of option contracts on the German mark, *Swiss franc* and in the case of option contracts on the [Swiss franc] *European Currency Unit* bidding and/or offering so as to create differences of no more than \$.0004 between the bid and the offer for each option contract for which the bid is \$.0040 or less, no more than \$.0005 where the bid is more than \$.0040 but does not exceed \$.0160, and no more than \$.0006 where the bid is more than \$.0160.

In the case of option contracts on the Canadian dollar, bidding and/or offering so as to create differences of no more than \$.0005 between the bid and the offer for each option contract for which the bid is \$.0050 or less, no more than \$.0010 where the bid is more than \$.0050 but does not exceed \$.0200, and no more than \$.0015 where the bid is more than \$.0200.

In the case of option contracts on the French franc, bidding and/or offering so as to create differences of no more than \$.0002 between the bid and the offer for each option contract for which the bid is \$.0020 or less, no more than \$.00040 where the bid is more than \$.0020 but does not exceed \$.0080 and no more

than \$.0006 where the bid is more than \$.0080.

In the case of option contracts on the Japanese yen, bidding and/or offering so as to create differences of no more than \$.000004 between the bid and the offer for each option contract for which the bid is \$.000040 or less, no more than \$.000005 where the bid is more than \$.000040 but does not exceed \$.000160, and no more than \$.000006 where the bid is more than \$.000160.

The Exchange may establish, however, differences other than the above for one or more series of classes of foreign currency option. The bid-ask differentials as stated above shall apply to all but the longest term series of foreign currency options open for trading in each class. For these series, the bid-ask differentials shall be twice those stated above.

**Rule 1033 bids and Offers—Premium**

(a) No change.

(b)(i) No change.

(b)(ii)—In the case of options on foreign currencies, in terms of dollars per unit of the underlying foreign currency. However, the first two decimal places shall be omitted from all bid and offer quotations for the British pound, the German mark, and Swiss franc, the Canadian dollar, [and] the French franc, *and the European Currency Unit* and the first four decimal places shall be omitted from all bid and offer quotations for the Japanese yen (e.g., a bid of ".88" for an option contract on the German mark shall represent a bid to pay \$.0088 per unit of underlying foreign currency—i.e., a premium of \$550—for an option contract having a unit of trading of 62,500 marks; a bid of ".9.2" for an option contract on the British pound shall represent a bid to pay \$.0920 per unit of underlying foreign currency—i.e., a premium of \$1,150—for an option contract having a unit of trading of 12,500 pounds; *a bid of .44 for an option contract on the ECU shall represent a bid to pay .0044 per unit of underlying foreign currency—i.e. a premium of \$275—for an option contract having a unit of trading of 62,500 ECU's;* a bid of ".52" for an option contract on the French franc shall represent a bid to pay .0052 per unit of underlying foreign currency—i.e., a premium of \$650.—for an option contract having a unit of trading of 125,000 francs; and a bid of "1.6" for an option contract on the Japanese yen shall represent a bid to pay \$.000160 per unit of underlying foreign currency—i.e., a premium of

\$2,000—for an option contract having a unit of trading of 6,250,000 yen.

#### Rule 1034 Minimum Fractional Changes

(i) No change.  
(ii)—In the case of options on foreign currencies, \$.0005 for option contracts on the British pound, \$.0001 for option contracts on the German mark, \$.0001 for option contracts on the Swiss franc, \$.0001 for option contracts on the Canadian dollar, \$.0001 for option contracts on the ECU, \$.00005 for option contracts on the French franc and \$.000001 for option contracts on the Japanese yen.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change would permit PHILX to list options on the European Currency Unit ("ECU"). The ECU, is the official unit of transfer of the European Economic Community's ("EEC") European Monetary System. The ECU is a weighted average of the currencies of the EEC countries, determined approximately according to the relative gross domestic products of and trade among EEC member states. The following fixed amounts of currencies comprise the ECU:

The Deutsche mark—0.719  
French franc—1.31  
British Pound Sterling—0.878  
Italian Lira—140.00  
Netherlands Guilder—0.256  
Belgium franc—3.71  
Luxembourg franc—0.14  
Danish Kroner—0.219  
Irish Punt—0.00871  
Greek Drachma—1.15

The EEC in late 1984 completed an offering of 9% percent bonds which are due in 1996 and are denominated in ECU's. Significantly, this was the first

registered public offering in the U.S. of bonds denominated in a foreign currency and the foreign currency of choice was the ECU.

Like other currencies subject to options trading on the PHILX, the ECU is a significant factor in the interbank foreign exchange market and is used by major multinational companies for financing international trade, and short and intermediate term borrowings in Europe and around the world. As like other foreign currencies subject to options trading on the PHILX, the ECU is not pegged to a fixed rate of exchange vis-a-vis the U.S. dollar and is convertible freely to all major currencies including the U.S. dollar. It is widely utilized in commercial transactions such as invoice pricing, settling consumer travelers checks and lending by most European and U.S. moneycenter banks. The ECU participates with other major foreign currencies in an established worldwide clearance and settlement system. Over the last several years, multinational corporations have increasingly used the ECU for denominating international debt issues of varying maturities and its place in the Eurobond market is expanding rapidly. The ECU provides a mean of diversifying currency risk, and is less volatile than other foreign currencies.<sup>1</sup>

Thus like the PHILX's other currency products, the ECU is an appropriate underlying foreign currency for listed options trading.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it will facilitate transactions in securities and protect investors and the public interest.

##### B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

<sup>1</sup> The following chart shows the relative volatility of the ECU:

	Standard deviation percent p.a.		
	1979-84	1982-84	1983-84
ECU vs. U.S. dollar.....	11.22	10.38	9.45
Deutschmark vs. U.S. dollar.....	12.19	11.11	10.17
French franc vs. U.S. dollar.....	11.77	11.68	10.10
Pound sterling vs. U.S. dollar.....	10.67	9.30	8.65

Note.—Chart Courtesy of First Boston Corporation.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

##### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

##### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

May 20, 1985.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc 85-12631 Filed 5-23-85; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended May 17, 1985

## Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Dated filed	Docket No.	Description
May 13, 1985	43124	Air Creebec Inc., c/o William F. Clark, Nobbs, Woods & Clark, 70 University Avenue, Suite 250, Toronto, Ontario M5J 2M4. Application of Air Creebec Inc. pursuant to Section 402 of the Act and Subpart Q of the Regulations for a foreign air carrier permit authorizing nonscheduled or charter foreign air transportation between any point or points in Canada and any point or points in the United States using large aircraft. Answers may be filed by June 10, 1985.
Do	43129	United Charter Company, c/o Robert E. Cohn, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036. Application of United Charter Company pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign interstate and overseas charter air transportation of persons, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by June 10, 1985.
Do	43130	United Charter Company, c/o Robert E. Cohn, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036. Application of United Charter Company pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by June 10, 1985.
Do	42737	American Airlines, Inc., c/o Alfred V. J. Prather, Prather Seeger Doolittle & Farmer, 1800 M Street, NW., Suite 701, Washington, D.C. 20036. Amendment No. 1 to the Application of American Airlines, Inc. amends its application, seeking certificate authority between Dallas/Ft. Worth and Tokyo, so as to add Los Angeles as a U.S. co-terminal point. Answers may be filed by June 10, 1985.
Do	42836	Continental Air Lines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Washington, D.C. 20036. Amendment No. 1 to the Application of Continental Air Lines hereby amends its application as follows: 1. Continental amends paragraph 4 of the Application to read: "4. Continental requests that the Department of Transportation issue it a certificate to engage in nonstop foreign air transportation of persons, property and mail over the segments listed below: (a) Between the terminal points Houston/Dallas/Fort Worth, Texas and the terminal point Tokyo, Japan; (b) Between the terminal point Honolulu, Hawaii and the terminal point Tokyo, Japan; (c) Between the terminal point Los Angeles, California and the terminal point Tokyo, Japan; (d) Between the terminal point Honolulu, Hawaii and the terminal point Tokyo, Japan." Answers may be filed by June 10, 1985.
May 16, 1985	42976	Continental West Airlines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Washington, D.C. 20036. Amendment No. 1 to the Application of Continental West Airlines, Inc., submitting Supplemental Information. Answers may be filed by June 13, 1985.
May 17, 1985	43086	Aerolineas Dominicanas, S. A., c/o Peter R. Lopez, 26 West Flagler Street, Suite 202, Miami, Florida 33130. Application of Aerolineas Dominicanas, S. A., pursuant to Section 402 of the Act and Subpart Q of the Regulations requests renewal of its foreign air carrier permit. Answers may be filed by June 14, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-12602 Filed 5-23-85; 8:45 am]

BILLING CODE 4910-82-M

## Federal Aviation Administration

[Summary Notice No. PE-85-12]

## Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions

previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: June 17, 1985.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. —, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 21, 1985.

John H. Cassady,  
Assistant Chief Counsel, Regulations and Enforcement Division.

## PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24584	Comdata Network, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24628	The Pennsylvania State University	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24624	Double Wharf Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24634	United Chem-Con Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24619	American Continental Aviation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23514	Fairington Aircraft Corp.	14 CFR 61.131(b)(3)	To allow students of petitioner to take the gyroplane commercial pilot flight test after having completed 40 hours of flight time in gyroplanes, subject to certain conditions and limitations.
24592	Mr. John R. Mullin	14 CFR 61.151	To allow petitioner to qualify for an Airline Transport Pilot certificate (simulator-only) and to exercise the privileges of a simulator instructor without a first class medical certificate. Petitioner suffers from diabetes and is not eligible for a medical certificate under Part 67.
26426	Arial Advantage	14 CFR 91.79(b)	To allow petitioner to operate hot air balloons at altitudes 500 feet above the highest obstacle within 500 feet horizontal distance.
23685	Department of the Navy, MCAS Beaufort	14 CFR 101.23(b) and 101.23(c)	Extension of Exemption 3938, to allow for the firing of missile plume simulator GTR-18 Class B fireworks, "Smoky Sam," within MCAS Beaufort Controlled Firing Areas. These areas are within 5 miles of MCAS Beaufort County Airport.
24613	Continental West Airlines	14 CFR 121.3	To permit petitioner to operate as a domestic air carrier and flag air carrier without a Federal Aviation Administration (FAA) air carrier operating certificate when using airplanes maintained and operated by Continental Airlines, Inc.

## DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24478	Global Int'l Airways Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane in noncompliance with the operating noise limits until hush kits are installed. <i>Granted 5/6/85.</i>
24358	Rich International	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707-300 aircraft until hush kits are installed. <i>Granted 5/2/85.</i>
23358	Clarke Outdoor Spraying Co., Inc.	14 CFR 91.39(c)	To permit petitioner under certain conditions to carry passengers in restricted category aircraft. <i>Granted 4/30/85.</i>
24399	Peninsula Seafoods Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8-55F aircraft in noncompliance with the operating noise limits. <i>Denied 5/6/85.</i>
12738	Union de Transport	14 CFR Portions of Parts 21, 61, 63, and 91	Amendment to Exemption No. 1775 to permit petitioner to operate four leased, U.S.-registered airplanes, using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). <i>Granted 5/3/85.</i>
24458	American Airlines	14 CFR Portions of Part 121, Appendix H	To allow petitioner to conduct B-747 and DC-10 Phase IIA training in a Phase I simulator until June 1, 1986. <i>Granted 5/3/85.</i>
24328	William Addison Chisholm	14 CFR 61.107 and 61.39(a)(5)	To allow petitioner to obtain a private pilot certificate with a gyroplane rating without having instruction from a certified flight instructor. <i>Denied 5/3/85.</i>
23430	Douglas Aircraft Co.	14 CFR 61.57(c)	To extend the May 1 termination date of Exemption 3754. That exemption allows pilots to meet the pilot-in-command landing recency requirements by using a Phase I advance simulator. <i>Granted 5/1/85.</i>
24593	Venezolana Internacional De Aviacion S.A. & the Flying Tiger Line, Inc.	14 CFR 21.181, 43.3, 43.7, and 121.379	To permit petitioner to operate a leased U.S.-registered Boeing 747 (B-747) aircraft utilizing a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). <i>Granted 5/6/85.</i>
23036	Icelandair, S.A.	14 CFR Portions of Part 21 and 91	Extension of Exemption 3531 to allow petitioner to operate a leased, U.S.-registered DC-8-55 aircraft, N918R, using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). <i>Granted 4/30/85.</i>
24324	Trans Int'l Airlines	14 CFR 121.613, 121.623 and 121.624	To allow petitioner to flight release an airplane under IFR to a destination airport and list an alternate airport when weather forecasts for either or both airports include conditional words such as "occasionally," "briefly," or "a chance of." <i>Denied 5/2/85.</i>

[FR Doc. 85-12714 Filed 5-23-85; 8:45 am]  
BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

## Customs Service

[T.D. 84-86]

## Tuna Fish—Tariff-Rate Quota for the Calendar Year 1984; Revision

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Revised figures provided by the National Oceanic and Atmospheric Administration (NOAA) for the U.S. pack of canned tuna has changed the quota level for 1984 from 89,699,000 pounds to 95,587,400 pounds for the

calendar year January 1 through December 31, 1984.

**SUMMARY:** This document revises a notice published as T.D. 84-86 in the Federal Register on April 23, 1984 (49 FR 17113).

**FOR FURTHER INFORMATION CONTACT:** William J. Wagner III, Head, Quota Section, General Programs Branch, Duty Assessment Division, Office of Commercial Operations, U.S. Customs Service, Washington, D.C. 20229 (202-566-8592).

Dated: May 20, 1985.  
**Frank R. Brennan,**  
Director, Duty Assessment Division.  
[FR Doc. 85-12007 Filed 5-23-85; 8:45 am]  
BILLING CODE 4820-02-M

## UNITED STATES INFORMATION AGENCY

## Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "INDIA" (included in the list<sup>1</sup> filed as a part of

<sup>1</sup> An itemized list of objects included in the exhibit is filed as part of the original document.

this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between The Metropolitan Museum of Art, New York, New York and the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about September 9, 1985, to on or about January 5, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 20, 1985.

**Thomas E. Harvey,**

*General Counsel and Congressional Liaison*  
[FR Doc. 85-12623 Filed 5-23-85; 8:45 am]

BILLING CODE 8230-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

##### Determination Regarding the Withdrawal From Warehouse of Certain Alloy Tool Steel Products

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice.

**SUMMARY:** This notice permits the  
withdrawal from warehouse for

consumption of not more than forty-five  
tons of certain alloy tool steel products.

**EFFECTIVE DATE:** May 22, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Maria T. Springer, Office of the United  
States Trade Representative, (202) 395-  
4946.

**SUPPLEMENTARY INFORMATION:**

Presidential Proclamation 5074 of July  
19, 1983 (48 FR 33233), provides for the  
temporary imposition of increased  
tariffs and quantitative restrictions on  
certain stainless steel and alloy tool  
steel products imported into the United  
States. Headnote 10(d), part 2A of the  
Appendix to the Tariff Schedules of the  
United States (TSUS) authorizes the U.S.  
Trade Representative to adjust the  
restraint level for any such steel to be  
exceeded during any restraint period.

Accordingly, I have determined that  
an amount not to exceed forty-five short  
tons of the following alloy tool steel  
product, provided for in Tariff Schedules  
of the United States (TSUS) item 926.21,  
may be entered for consumption or  
withdrawn from Customs bonded  
warehouse, in excess of the restraint  
level provided for the period April 20,  
1985-July 19, 1985 for the "Other"  
foreign country category:

Bars of alloy steel, annealed,  
centerless and ground, not less than 5.8  
millimeters and not more than 30  
millimeters in diameter and 12 feet in  
length, containing, in addition to iron,

each of the following elements by  
weight in the amount specified:

Carbon: not less than 0.30 percent  
not more than 0.38 percent

Manganese: not less than 0.40 percent  
not more than 0.70 percent

Silicon: not less than 0.15 percent  
not more than 0.40 percent

Phosphorous: not more than 0.35 percent

Sulphur: not more than 0.035 percent

Chromium: not less than 1.4 percent  
not more than 1.7 percent

Nickel: not less than 1.4 percent  
not more than 1.7 percent

Molybdenum: not less than 0.15 percent  
not more than 0.30 percent.

Certified by the importer of record or  
the ultimate consignee at the time of  
entry for use in the manufacture of drill  
bits.

In addition, an identical amount shall  
be deducted from the quota quantity  
allocated to the "Other" foreign country  
category for TSUS 926.22 for the  
restraint period July 20, 1985-October  
19, 1985. This determination supersedes  
the provisions of the notice of October  
20, 1983 (48 FR 48888), to the extent  
inconsistent herewith.

**Michael B. Smith,**

*Acting U.S. Trade Representative.*

[FR Doc. 85-12538 Filed 5-23-85; 8:45 am]

BILLING CODE 3190-01-M

# Sunshine Act Meetings

Federal Register

Vol. 50, No. 101

Friday, May 24, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### 1

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday May 23, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,239-L (Amended)

- City and County Bank of Knox County, Knoxville, Tennessee
- City and County Bank of Anderson County, Lake City Tennessee
- United American Bank in Knoxville, Knoxville, Tennessee

Memorandum re: 1985 Automation Proposal for the Division of Bank Supervision.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Loan Sales—Reports Due Under Delegated Authority.

#### Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 21, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-12697 Filed 5-22-85; 11:57 am]

BILLING CODE 6714-01-M

### 2

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, May 28, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participatin in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

#### Discussion Agenda:

Application for Federal deposit insurance:

American Express Centurion Bank, a proposed new bank to be located at 300 Continental Drive, Stanton (P.O. Newark), Delaware.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 21, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-12698 Filed 5-22-85 11:58 am]

BILLING CODE 6714-01-M

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#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, May 20, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Seamen's Savings Bank, an operating noninsured saving bank located at 221 Commercial Street, Provincetown, Massachusetts, for Federal deposit insurance.

Application of Columbus Bank and Trust Company, Columbus, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with First United Bank, Montezuma, Georgia, and to establish the two offices of First United Bank as branches of the resultant bank.

Application of the Central Trust Company of Northeastern Ohio, N.A., Canton, Ohio, for consent to acquire certain assets of and assume the liability to pay deposits made in The Surety Savings and Loan Company, Dover, Ohio, a non-federally insured institution.

Application of The Somerville National Bank, Somerville, Ohio, for consent to acquire the assets of and assume the liability to pay deposits made in Somerville Building, Loan & Savings Association Co., Somerville, Ohio, a non-federally insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,240-L

City and County Bank of Knox County  
Knoxville, Tennessee

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: May 21, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-12695 Filed 5-22-85; 11:41 am]

BILLING CODE 6714-01-M

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#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, May 20, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven day's notice to the public, of the following matters:

Application of City Loan Bank, an operating noninsured institution located at 200 West Market Street, Lima, Ohio, for Federal deposit insurance.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:

The Commercial Bank of California, Los Angeles (West Hollywood), California

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: May 21, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-12696 Filed 5-22-85; 11:41 am]

BILLING CODE 6714-01-M

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#### FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

##### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

##### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 21, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-12663 Filed 5-22-85; 10:16 am]

BILLING CODE 6210-01-M

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#### POSTAL SERVICE BOARD OF GOVERNORS Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (29 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, June 3, 1985, in Washington, D.C., and at 8:30 a.m. on Tuesday, June 4, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the June 3 meeting is closed to public observation. The June 4 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on May 7, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for June 3. (See 50 FR 20033, May 13, 1985.)

The meeting will involve a discussion of personnel matters.

##### Agenda

Monday Session: June 3, 1985—1:00 p.m. (Closed)

1. Discussion of Personnel Matters.

Tuesday Session: June 4, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 6-7, 1985.

2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Discussion of the ZIP+4 Program.

4. Briefing on Second-Class Mail.

(Mr. Campbell, Assistant Postmaster General, Mail Processing, will brief the Board on second-class mail operations.)

5. Report of the Chief Postal Inspector.

(Mr. Clauson, Chief Postal Inspector, will provide a report on the Inspection Service.)

6. Report on Consumer Protection under Pub. L. 98-186.

(Mr. Clauson will review the semi-annual report on consumer protection distributed to the Board in advance of the meeting in accordance with 39 U.S.C. section 3013.)

7. Briefing on Strategic Business Plan, 1986-1990.

(Mr. Strasser, Director, Office of Policy, Planning & Programs Coordination, will brief the Board on the Strategic Business Plan.)

8. Overview of the Technology Resource Department.

(Mr. Schiller, Assistant Postmaster General, Technology Resource Department, will provide a report on the Department.)

9. Consideration of Tentative Agenda for the July 1-2, 1985, meeting of the Board of Governors in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 85-12718 Filed 5-22-85; 2:13 pm]

BILLING CODE 7710-12-M

# Registered

Friday  
May 24, 1985

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## Part II

## Department of Labor

Employment Standards Administration,  
Wage and Hour Division

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Minimum Wages for Federal and  
Federally Assisted Construction; General  
Wage Determination Decisions; Notice

## DEPARTMENT OF LABOR

Employment Standards  
Administration, Wage and Hour  
DivisionMinimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination  
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedes  
Decisions to General Wage  
Determination Decisions

Modifications and supersedes decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedes decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedes decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage  
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84-3008	Apr. 6, 1984.
Louisiana:	
LA84-4059	Oct. 5, 1984.
LA84-4055	Sept. 28, 1984.
Michigan:	
MI84-5026	Dec. 21, 1984.
MI83-2008	Feb. 11, 1983.
New York: NY84-3036	Sept. 14, 1984.
Oklahoma: OK85-4011	May 10, 1985.
Texas:	
TX84-4112	Dec. 28, 1984.
TX85-4001	Jan. 25, 1985.
TX83-4075	Oct. 21, 1983.
TX83-4061	Aug. 26, 1983.
Tennessee: TN85-1001	Jan. 11, 1985.
Virginia: VA85-3003	Jan. 18, 1985.

Supersedes Decisions to General Wage  
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedes decision numbers are in parentheses following the number of the decisions being superseded.

Ohio: OH83-5122 (OH85-5026)	Nov. 25, 1983.
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Signed at Washington, D.C., this 17th day of May 1985

James L. Valin,  
Assistant Administrator.

BILLING CODE 4510-27-M

## REFERENCES

Basic Security Rating	Group Benefits
\$16.00	\$3.14
12.10	1.90
13.55	
13.45	2.00
11.00	.95

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
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15.33	Zone 1
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13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.71+2
15.33	Zone 1
15.23	Zone 2
14.26	Zone 3
14.26	2.71+2
13.10	2.71+2
17.61	2.71+2
14.61	3.89

Basic Security Rating	Group Benefits
16.48	2.71+2
16.13	2.

[illegible]

## MODIFICATIONS P. 2

DECISION NO. MFB-2008 - MFC #12 (48 FR 8456 - February 11, 1983) Alger, Barasa, Chippewa, etc., Counties, Michigan	Basic Monthly Rate	Private Benefits
<b>Class:</b> Agriculture Workers: Reminders of Counties: Chippewa, Millersburg, Pilettown and Soft Floor Layers: Cement Masons Electricians: Ditchmen and Iron Companies: Contracts over \$70,000 Contracts \$70,000 and under Line Construction: Linemen - Technicians Cable Splicers Combination digger oper- ator - tractor operator groundman Light Equipment operator groundman; distribution line truck driver oper- ator groundman Combination wheel track driver groundman Combination truck driver groundman, and groundman Plumbers and Pipefitters Power Equipment Operators: Class A Class B Class C Class D	\$17.75 2.02 14.77 18.67 14.97 13.74 15.31 13.24 15.50 16.13 12.07 10.59 10.10 8.55 14.97 12.97 11.47 10.96 10.21	\$4.30 \$2.02 2.12 2.12 2.12 2.12 2.20-44 2.20-44 8.54 8.54 1.00-84 8.54 1.00-84 8.54 1.00-84 8.54 1.00-84 2.89 4.30- 134 4.30- 4.30- 4.30- 134
<b>Class E:</b> Reminders of Counties: Chippewa, Millersburg, Pilettown and Soft Floor Layers: Cement Masons Electricians: Ditchmen and Iron Companies: Contracts over \$70,000 Contracts \$70,000 and under Line Construction: Linemen - Technicians Cable Splicers Combination digger oper- ator - tractor operator groundman Light Equipment operator groundman; distribution line truck driver oper- ator groundman Combination wheel track driver groundman Combination truck driver groundman, and groundman Plumbers and Pipefitters Power Equipment Operators: Class A Class B Class C Class D	\$17.75 2.02 14.77 18.67 14.97 13.74 15.31 13.24 15.50 16.13 12.07 10.59 10.10 8.55 14.97 12.97 11.47 10.96 10.21	\$4.30 \$2.02 2.12 2.12 2.12 2.12 2.20-44 2.20-44 8.54 8.54 1.00-84 8.54 1.00-84 8.54 1.00-84 8.54 1.00-84 2.89 4.30- 134 4.30- 4.30- 4.30- 134

BRUCCIA, STONERSON, PLAS-  
TRESS, TRENKLE WARRERS ;  
THE STONES

NOTIFICATIONS P. 4

NOTIFICATIONS P. 3

SECTION NO. M33-2008 (Cont.)	Basic Hourly Rate	Fringe Benefits
<p>Add (Cont'd):</p> <p>Labors - Tunnel &amp; Shaft:</p> <p>Contracts over \$400,000:</p> <p>Group 1</p> <p>Group 2</p> <p>Group 3</p> <p>Group 4</p> <p>Group 5</p> <p>Group 6</p> <p>Contracts \$400,000 or less:</p> <p>Group 1</p> <p>Group 2</p> <p>Group 3</p> <p>Group 4</p> <p>Group 5</p> <p>Group 6</p>	<p>\$12.56</p> <p>12.65</p> <p>12.70</p> <p>12.85</p> <p>13.06</p> <p>13.31</p> <p>10.55</p> <p>10.63</p> <p>10.68</p> <p>10.84</p> <p>11.04</p> <p>11.20</p>	<p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p> <p>2.99</p>
<p>Labors - Definition of Groups:</p> <p>Group 1: All construction laborers on building and heavy work, stone and masonry, and all construction sites and streets which are not included in the highway schedule, Tool crib attendant, Oil-cum operator, and men using pneumatic or acetylene cutting torch</p> <p>Group 2: Marlar miners, Material miners (whether done by hand or done by machine), Vibrator operator, Concrete mixer, Motor driven hammers, Chipping hammers, Tamping machines, Green cutting (whether run by air, electric or gas), Sand blasters, laborers with concrete crew, mixer to pour, including four first trucks</p> <p>Group 3: Cement gas not-silencer, blasters, sub-art, drillers, burner operators, Layers of all non-metallic pipe</p> <p>Group 4: Calisson worker</p> <p>Group 5: Air Track</p>		
<p>SECTION NO. M33-2008 (Cont.)</p> <p>Add (Cont'd):</p> <p>Labors - Definition of Groups (Cont'd):</p> <p>Group 1: Construction Laborers</p> <p>Group 2: Marlar and Material Worker, Concrete Form Man, Signal Man, Non-hole, Shell and Catch Basin Builder, Guard Rail Builder and Fence Erector</p> <p>Group 3: Air, Gasoline &amp; Electric Tool Operator, Vibrator operator, Drillers, Pump Man, Tire Replacer, Rockers, Non-ferrous Steel or Mesh Men (e.g., wire mesh, steel mats, doweled bars, etc.), Cement Finisher, Pipe Jacking and Boring Men, Water Drill and Air Track Operator and Concrete Saw operator (under 40 h.p.), Windlass and Dragger man</p> <p>Group 4: Trench or Excavating Grade Men</p> <p>Group 5: Pipe Layer (installing pipe, multi-pipe or other conduits)</p> <p>Labors - Tunnel &amp; Shaft:</p> <p>Group 1: Tunnel, Shaft &amp; Calisson Worker, Deep House Trencher, Trenching Man (on gas)</p> <p>Group 2: Machine, Hand-wall, Catch Basin Builder, Bricklayer Trencher, Marlar Men, Material Mixer, Fence Erector &amp; Guard Rail Builder</p> <p>Group 3: Air Tool operator, Jackhammer man, bush hammer man &amp; grinding man, First Bottom Man, Second Bottom Man, Cage Trencher, Car Pusher, Carrier</p>	<p>Basic Hourly Rate</p> <p>Fringe Benefits</p>	<p>Fringe Benefits</p>
<p>SECTION NO. M33-2008 (Cont.)</p> <p>Add (Cont'd):</p> <p>Labors - Definition of Groups (Cont'd):</p> <p>Group 1: Tunnel &amp; Shaft:</p> <p>Man, Concrete Man, Concrete Form Man, Concrete Repair Man, Cement Invert Laborer, Cement Finisher, Concrete Shovel, Concrete Worker, Floor Man, Gasoline &amp; Electric Tool operator, Gasoline Man, Grouse Quater, Pump Man, Outside Lock Tender, Scaffold Man, Top Signal Man, Sditch Man, Track Man, Trencher Man, Utility Man, Vibrator Man, Winch operator, Pipe Jacking, Boring Men, Water Drill and Air Track operator and concrete saw operator (under 40 h.p.)</p> <p>Group 4: Tunnel, Shaft &amp; Calisson Worker, Bracer Man, Liner Plate Man, Long Nail Dobby Driver and Well Point Man</p> <p>Group 5: Tunnel, Shaft &amp; Calisson Miner, Drill Runner, Key Board operator, Power Knife Operator, Reinforced steel or mesh man (e.g., wire mesh, steel mats, doweled bars, etc.)</p> <p>Group 6: Dynamite man and Powder Man</p>	<p>Basic Hourly Rate</p> <p>Fringe Benefits</p>	<p>Fringe Benefits</p>

NOTIFICATIONS P. 5

DECISION NO. 8784-1036 -  
MCO. #1  
149 FR 36230 - Sept. 14,  
1984)  
Omondaga County, New York

## CHANGE:

CLAIMS  
MARBLE, TILE & TERRAZZO  
WORKERS  
MARBLE, TILE & TERRAZZO  
FINISHERS  
MILWAUKEE  
PALMIST:  
Types of Williamstown,  
Amboy Constantia, and  
Omdaga Lake  
Brush & Roller  
Taping  
Spray: Epoxy & special  
coatings brush & roll  
application  
Epoxy and special coat-  
ings spray application  
Sandblasting  
Boatwain chair  
Swing  
Structural Steel  
Bridge  
Sign  
Repaint department  
stores, nursing homes,  
college dormitories,  
apartments complexes &  
residential high rises:  
Brush & Roller  
Taping  
Spray: Epoxy & special  
coatings brush & roll  
application  
Epoxy and special coat-  
ings spray application  
Sandblasting  
Boatwain chair  
Swing  
Structural steel  
Bridge  
sign  
ROOFERS  
STEAMFITTERS

Basic Hourly Rate	Prize Benefits
13.37	2.15
13.72	3.31
12.04	2.30
14.765	5.06+8
12.10	3.25
12.35	3.25
12.50	3.25
12.80	3.25
12.95	3.25
12.85	3.25
12.75	3.25
12.70	3.25
12.30	3.25
9.55	3.25
10.29	3.25
10.50	3.25
10.71	3.25
10.88	3.25
11.01	3.25
10.92	3.25
10.84	3.25
10.80	3.25
11.30	3.25
8.12	3.25
15.25	3.45
16.145	4.42+8

## TRUCK DRIVERS

Building projects where  
total project cost is  
over \$5 million  
Class 1  
Class 2  
Class 3  
Class 4  
Building Construction  
where total project  
cost is under \$5  
million

Basic Hourly Rate	Prize Benefits
14.58	2.72
14.73	2.72
14.78	2.72
14.98	2.72
13.58	2.57

## DECISION 8085-4011-Mod.#1

May 10, 1985  
Alfalfa, Canadian, Blaine,  
Caddo, Beckham, Carter,  
Cleveland, Comanche, Cotton,  
Custer, Dewey, Ellis, Gar-  
field, Garvin, Grady, Grant,  
Greer, Harmon, Harper,  
Jackson, Jefferson, John-  
ston, Kay, Kingfisher,  
Kiowa, Lincoln, Logan,  
Love, McClain, Major,  
Marshall, Murray, Noble,  
Oklahoma, Payne, Pottotoc,  
Pottawatomie, Roger Mills,  
Seminole, Stephens, Till-  
man, Washita, Woods and  
Woodward Counties, Oklahoma

OMIT:  
Sound and Communication  
Technicians  
Sound and Communication  
Technicians Classifi-  
cation Area:  
Coal, Craig, Creek,  
Delaware, Hughes, Mayes,  
Nowata, Oklahoma,  
Oklahoma & that portion  
east of State Highway  
No. 19 in Osage & Payne  
Counties, Ottawa,  
Eagle, Indian, Wagoner &  
Union Townships in  
Payne County; Pittsburg,  
Rogers, Tulsa, Washing-  
ton & Adams, Creek,  
Cherokee, Coal, Creek,  
Lone Star and Shaskan  
Townships in Wagoner  
County.

ADD:  
SOUND & COMMUNICATION  
TECHNICIANS FOR EAGLE,  
INDIAN, INDIAN, WAGONER  
& UNION  
COUNTIES IN PAYNE  
COUNTY

CHANGE:  
SHEET METAL WORKERS

## CHANGE (cont'd)

MARBLE & TILE FINISHERS,  
TERRAZZO FINISHERS,  
TERRAZZO FLOOR MACHINE  
MAN, TERRAZZO BASE MACHINE  
MAN AREA 1 CLASSIFICATION  
AREAS, GROUPS AND DEFINI-  
TIONS TO READ:  
Kay, Noble, Payne, Lin-  
coln, Pottawatomie,  
Seminole, Pottotoc,  
Johnson, Grant, Garfield,  
Logan, Oklahoma, Clev-  
land, McClain, Garvin,  
Murray, Marshall, Love,  
Carter, Jefferson,  
Stephens, Grady, Cana-  
dian, Kingfisher, Major,  
Alfalfa, Woods, Blaine,  
Caddo, Comanche, Cotton,  
Tillman, Kiowa, Washita,  
Custer, Dewey, Woodward,  
Harper, Ellis, Roger  
Mills, Beckham, Greer,  
Jackson and Harmon  
Counties, Oklahoma

Basic Hourly Rate	Prize Benefits
\$12.02	
12.02	
16.15	2.65

NOTIFICATIONS P. 6

## MISPLACED DECISION

DECISION NO. YEAR-MONTH-DAY	Basic Hourly Rate	Fringe Benefits
DECISION #7085-4001-MOD. 3 155 FR 36237-Jan. 25, 1985 Galveston & Harris Cos., Texas CHANGE: Bricklayers & Stonemasons: Galveston County Harris County Painters: East Harris County Commercial Painter Sealing Stage Works and Material Injurious to the skin Commercial Repaint Work	\$16.15 15.14	\$2.55 2.55
DECISION #7084-4112-MOD. 4 143 FR 55537-Dec. 28, 1984 Collins, Dallas, Denton, Ellis Grayson, Hood, Hunt, Johnson Kaufman, Palo Pinto, Rock- wall, Tarrant, & Wise Cos., Texas AEOI: Painters: Zone 2: Spray	\$16.68	\$ 1.47
DECISION #7093-4001-MOD. 45 149 FR 38966-Aug. 25, 1985 El Paso County, Texas CHANGE: Bricklayers	\$11.00	\$1.67
DECISION NO. YEAR-MONTH-DAY 750 FR 2764-January 18, 1985 ALLEGANY, AUGUSTA, BATH, CLARK, FREDERICK, HIGHLAND, PAGE, ROCKBRIDGE, ROCKING- HAM, SHENANDOAH & WARREN and Cities of BUNDA VISTA, CLINTON FORGE, COTTAGEVILLE, FRONT ROYAL, HARRISBURG, LEXINGTON, STAUNTON, WAYNESBORO and WINCHESTER CHANGE: TRACTOR OPERATOR (utility)	4.65	

## SUPERSEDED DECISION

STATE: Ohio  
COUNTIES: Statewide  
DECISION NUMBER: 0885-5026  
DATE: Date of Publication  
Supercedes Decision No. 0883-5122, dated November 25, 1983, in 48 FR 51254  
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

BRICKLAYERS & STONEMASONS:	Basic Hourly Rate	Fringe Benefits
Area 1	\$17.88	\$ 1.55
Area 2	15.05	2.37
Area 3	16.63	3.44
Area 4:		
Bricklayers	19.97	3.00
Area 5:		
Sever Bricklayers	20.12	3.00
Area 6	15.15	2.35
Area 7	15.52	3.21
Area 8	16.94	2.75
Area 9	17.09	3.27
Area 10	15.80	2.58
Area 11	15.00	1.75
Area 12	16.80	3.55
Area 13	16.00	2.40
Area 14	14.25	3.25
Area 15	19.59	4.12
Area 16	13.60	3.58
Area 17	14.25	3.10
Area 18	16.09	2.89
Area 19	16.18	3.43
Area 20	17.16	1.55
Area 21	17.89	1.53
Area 22	17.60	2.20
Area 23	20.47	1.25
Area 24	15.60	1.58
Area 25	15.71	2.54
Area 26	14.90	2.95
Area 27	16.81	.55
Area 28	18.10	.81
Area 29	17.92	4.97
Area 30	16.25	2.45
Area 31	17.14	3.10
CARPENTERS & PILEDRIVMEN:		
Area 1:		
Carpenters	15.92	3.08
Piledrivers	16.21	3.08
Area 2:		
Carpenters	14.81	3.14
Piledrivers	15.46	3.14
Area 3:		
Carpenters	16.89	3.11
Piledrivers	18.50	5.61
CEMENT MASONS:		
Area 1	17.23	2.87
Area 2	16.31	2.87
Area 3	15.91	2.87
ELECTRICIANS:		
Area 1	17.28	3.36
Area 2	17.25	3.36
Area 3	2.37	

CARPENTERS & PILEDRIVMEN (CONT'D):

Basic Hourly Rate	Fringe Benefits
\$18.95	\$5.16
18.50	5.61
14.81	3.14
15.46	3.14
15.76	3.11
16.58	3.53
17.00	3.53
17.68	3.37
18.16	3.37
15.76	3.11
15.33	4.66
15.37	3.90
15.45	2.97
15.31	2.97
16.20	3.90
17.11	3.90
17.40	3.79
18.50	5.61
17.23	2.87
16.31	2.87
15.91	2.87
17.28	3.36
17.25	3.36
2.37	

Basic Hourly Rate	Range Benefits	Basic Hourly Rate	Range Benefits
ELECTRICIANS (CONT'D):			
Area 3:	\$17.74 \$3.28+	Area 19:	\$16.90 \$4+2.08
Area 4:	18.20 0.174+	Electricians	17.50 \$4+2.08
Area 5:	19.21 5.78+	Cable Splicers	17.33 3.28+
Area 6:	1.76	Area 20:	1.85
Area 7:	16.35 \$4+4.62	Area 21:	
Area 8:	16.60 \$4+4.62	Less than 5,000 man hours:	
Area 9:	15.43 \$4+4.33	Electricians	13.44 \$4+2.81
Area 10:	15.68 \$4+4.33	Cable Splicers	14.45 \$4+2.81
Area 11:	16.00 \$4+4.33	All Other Work:	
Area 12:	16.55 \$4+4.33	Electricians	16.80 \$4+2.88
Area 13:	17.40 \$4+4.33	Cable Splicers	18.06 \$4+2.81
Area 14:	17.90 \$4+4.33	Area 22:	
Area 15:	18.00 \$4+4.33	Electricians	17.32 \$4+3.06
Area 16:	18.50 \$4+4.33	Cable Splicers	18.19 \$4+3.06
Area 17:	18.75 \$4+4.33	Area 23:	
Area 18:	19.21 \$4+4.33	Electricians	18.93 \$3.28+
Area 19:	19.40 \$3.1/34+	Cable Splicers	19.18 \$3.28+
Area 20:	17.90 \$1.74+	Area 24:	18.95 \$3.14+
Area 21:	1.50	Area 25:	2.90
Area 22:	18.00 \$4+4.33	Electricians	19.51 \$3.28+
Area 23:	18.50 \$4+4.33	Cable Splicers	20.88 \$3.28+
Area 24:	17.59 \$4+4.33	Area 26:	2.85
Area 25:	14.14 \$4+2.48	Area 27:	
Area 26:	16.98 \$4+4.33	Up to 10 miles from Union Hall in Ashland, Kentucky	17.33 4.36
Area 27:	17.71 \$4+4.33	10 to 50 miles from Union Hall in Ashland, Kentucky	17.66 4.36
Area 28:	18.00 \$4+4.33	50 miles & over from Union Hall in Ashland, Kentucky	19.62 4.36
Area 29:	18.24 \$4+4.33	Area 28:	
Area 30:	18.50 \$4+4.33	Reinforcing	15.93 4.37
Area 31:	18.75 \$4+4.33	Ornamental: Structural	16.03 4.33
Area 32:	19.21 \$4+4.33	Fence Erectors	14.43 4.33
Area 33:	20.00 \$4+4.33	Area 31:	
Area 34:	23.00 \$4+4.33	Within 15 miles radius of U. O. Office #290	16.16 4.37
Area 35:	23.00 \$4+4.33	Outside 15 miles radius of U. O. Office #290	16.31 4.37
Area 36:	23.00 \$4+4.33	Area 32:	13.35 6.16

DECISION NO. 0685-5076	Page 3
IRONWORKERS (CONT'D):	PAINTERS (CONT'D):
Area 5: 15.73	Area 9: 16.24
Area 6: 16.30	Brush: Roller 4.14
Area 7: 20.62	Spray: Tanks 4.12
Area 8: 17.96	Bridges: Poles: Pres- 4.21
Area 9: 16.38	sure Blasting: Towers 4.32
Area 10: 24.79	Structural Steel: 14.79
Area 11: 5.63	Stacks: Sandblasting: 5.63
Area 12: 16.40	& Metalizing 4.88
Area 13: 19.19	Brush: Roller 3.84
Area 14: 16.30	Structural steel 4.68
Area 15: 16.15	Brush: 4.68
Area 16: 16.15	Spray: 4.68
Area 17: 16.50	Area 11: 2.54
Brush: Roller 16.50	Brush: Roller: Tanks: 2.54
Power Tools under 40": 17.50	Bridges: Hydro Jet 17.50
Sandblasting: Spray: & 17.50	Cleaning: & Steam- 17.25
Structural Steel: 17.25	ing: 2.54
Bridges: Slatelal Struc- 17.25	Pot Tender: Sandblas- 17.19
tures over 40": Stacks: 17.25	ting: & Spray 17.19
& Storage Tanks 17.25	TV, Radio, & Electrical 17.17
Area 2: 14.40	Towers: Smoke Stacks 17.17
Brush: Roller 14.40	Booby-Natic (Brush or 15.50)
Pressure Cleaning: Sand- 15.50	Roller) 15.50
blasting: Spray 14.45	Booby-Natic (Spray) 15.50
Bridges: Guard Rails: & 14.45	Area 13: 14.84
Open Structural Steel 14.45	Brush: Roller 14.84
Area 3: 15.20	Structural Steel 15.20
Brush: 15.20	Spray 15.20
Structural steel 15.20	Sandblasting: Steam 15.19
Spray 15.20	Cleaning 15.19
Area 4: 18.46	Area 14: 15.10
Brush: 18.46	Brush: Roller 15.10
Bridge & Open Steel: 19.16	Structural Steel 15.10
Closed Steel over 55": 18.85	Sandblasting: Spray 15.10
Closed Steel below 55": 15.60	Area 15: 14.00
& Spray 15.60	Brush 14.00
Area 5: 16.25	Spray 15.54
Brush: Roller 16.25	Bridge Railings 15.54
Bridges: Sandblasting: 15.50	Bridges 16.00
Boiler Tender: & Spray 16.00	Area 16: 14.50
Area 6: 17.40	Brush: Roller 14.50
Brush: 17.40	Sandblasting: Spray: & 14.50
Spray 17.40	Waterblasting 14.50
Area 7: 14.98	Bridges over 40": 14.50
Brush: Roller 14.98	Stacks: Tanks: & 15.20
Bridges when highest 15.48	Towers 15.20
point of clearance is 15.98	
40' or over) 15.98	
Sandblasting: Spray 15.98	

[illegible]

PAINTERS (CONT'D):	Basic Hourly Rate	Fringe Benefits
Area 17:	\$13.36	
Brush	13.35	
Steel	13.35	
Spray	14.86	
Shedblasting	14.36	
Bridges	15.82	
Area 18:	16.72	\$2.55-9
Brush	17.22	2.55-9
Sandblasting; Spray	16.72	2.55-9
Area 19:	16.65	2.42
Brush; Roller	17.40	2.42
Structural Steel	17.50	2.42
Spray	17.65	2.42
Bridges; Sandblasting	15.24	1.95
Area 20:	15.13	1.95
Bridges; Structural Steel; Guard Rails	15.13	1.95
SPRINKLERS; PLUMBERS; & STEAMFITTERS:		
Area 1:	17.45	3.35
Within 10 mile radius of Portsmouth	17.45	3.35
Over 10 & within 20 mile radius of Portsmouth	17.78	3.35
Over 20 & within 35 mile radius of Portsmouth	17.80	3.35
Over 35 mile radius of Portsmouth	18.05	3.35
Area 2	18.35	3.10
Area 3	18.38	3.12
Area 4:	21.03	3.62
Plumbers	20.42	4.43
Pipefitters; and Steamfitters	16.91	4.23
Area 5	16.05	4.32
Plumbers; Gas Fitters	17.34	4.36
Pipefitters; and Steamfitters	18.80	3.80
Area 7	16.91	3.07-AN
Area 8	17.72	1.81
Area 9	18.14	3.23
Area 10	18.14	3.23
Area 11:		
Within 12 mile radius of 3rd & Main Str., Dayton, Ohio	18.56	2.98
Outside 12 mile radius of 3rd & Main Str., Dayton, Ohio	18.81	2.79

PIPEFITTERS, ETC. (CONT'D):	Basic Hourly Rate	Fringe Benefits
Area 12	\$18.13	\$2.72
Area 13	17.57	7.42
Area 14	19.50	3.72
Area 15	19.08	2.91
Area 16	19.55	3.60
Area 17	17.39	1.83
Area 18	17.23	6.31
Area 19:		
Excluding Railroad Maintenance, Renovation and Repair:		
Group 1:	15.23	3.00
Zone 1	14.00	3.00
Zone 2	13.57	3.00
Zone 3	13.57	3.00
Group 2:	15.15	3.00
Zone 1	14.12	3.00
Zone 2	13.95	3.00
Zone 3	13.95	3.00
Group 3:	15.43	3.00
Zone 1	14.20	3.00
Zone 2	13.77	3.00
Zone 3	13.77	3.00
Group 4:	15.58	3.00
Zone 1	14.35	3.00
Zone 2	13.92	3.00
Zone 3	13.92	3.00
Group 5:	15.88	3.00
Zone 1	14.65	3.00
Zone 2	14.22	3.00
Zone 3	14.22	3.00
Railroad Maintenance, Renovation and Repair:		
Cuyahoga, Geauga, Lucas, Lorain, & Summit Cos. Remaining Counties	8.15	2.70
Zone 1: Columbiana, Mahoning & Trumbull Counties:		
Class 1	17.38	4.11
Class 2	16.59	4.11
Class 3	15.83	4.11
Class 4	15.36	4.11
Class 5	15.26	4.11
Class 6	12.65	4.11

POWER EQUIPMENT OPERATORS (CONT'D):	Basic Hourly Rate	Fringe Benefits
Zone 2: Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage & Summit Cos.: Master Mechanic	\$18.78	\$3.86
Class A	18.53	3.86
Class B	17.58	3.86
Class C	17.32	3.86
Class D	16.22	3.86
Class E	13.23	3.86
Zone 3: Remainder of Counties:		
Master Mechanic	18.04	3.86
Class A	17.79	3.86
Class B	17.67	3.86
Class C	16.63	3.86
Class D	16.20	3.86
Class E	12.34	3.86
TRUCK DRIVERS:		
Zone 1: Cuyahoga, Geauga, & Lake Counties:		
Class 1	14.60	1
Class 2	14.75	1
Class 3	15.10	1
Zone 2: Remainder of State:		
Class 1	14.14	2.17-3
Class 2	14.19	2.17-3
Class 3	14.24	2.17-3
Class 4	14.34	2.17-3
Class 5	14.44	2.17-3
Class 6	14.61	2.17-3
LINE CONSTRUCTION:		
Area 1:		
Cable Splicers; Linemen Welders	20.31	3.1/2-4
Linemen	10.46	2.35
Operators: All Mechanized Equipment	18.77	3.1/2-4
Groundmen	12.00	2.35
Area 2:		
Linemen	17.87	8.1/2-4
Equipment Operators	16.08	8.1/2-4
Groundmen Truck Drivers	11.75	8.1/2-4

LINE CONSTRUCTION (CONT'D):	Basic Hourly Rate	Fringe Benefits
Area 3:		
Equipment Operators; Linemen	\$17.74	\$3.24-4
Line Truck Driver	10.64	3.24-4
Groundmen	11.53	3.24-4
Area 4:		
Cable Splicers; Equipment Operators; Line Truck Drivers:	18.20	3.1/2-4
Linemen	15.29	3.1/2-4
Groundmen	15.60	3.80
Area 5:		
Cable Splicers; Linemen	19.50	3.1/2-4
Pole Digging Equipment	17.55	3.1/2-4
Groundmen	15.60	3.1/2-4
Area 6:		
Equipment Operators; Linemen & Technicians	15.43	3.1/2-4
Cable Splicers; Welders	15.68	3.1/2-4
Groundmen	12.42	3.1/2-4
Area 7:		
Linemen; Mechanized Equipment Operators	16.00	3.1/2-4
Groundmen	12.00	3.1/2-4
Zone 2:		
Linemen; Mechanized Equipment Operators	16.55	3.1/2-4
Groundmen	12.41	3.1/2-4
Area 8:		
Linemen	17.40	3.1/2-4
Cable Splicers	17.90	3.1/2-4
Groundmen	12.18	3.1/2-4

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Basic Hourly Rates	Range Benefits
Area 9: Cable Splicers Linemen Line Equipment Operators Groundmen: Truck Drivers Area 10: Linemen: Line Equipment Operators: Truck Drivers Groundmen Area 11: Cable Splicers: Equipment Operators: Linemen Groundmen: Truck Drivers (Winch) Traffic Signal Work: Linemen: Operator Groundmen Area 12: Zone 1: Linemen: Cable Splicer: Operators: Pole Digging Equipment, Cranes, Hydraulic Lift or Bucket Operators: Line Truck with Winch or Pole: steel Handling Operators: Non-Specialized Trucks & Miscellaneous Equipment Groundmen-Truck Drivers Zone 2: Linemen: Cable Splicers: Operators: Pole Digging Equipment, Cranes, Hydraulic Lift or Bucket	10.84+ 82.95 17.59 10.84+ 2.85 15.33 10.84+ 2.85 11.73 10.84+ 2.85 18.00 14 1/24+ + K 10.80 14 1/24+ + K 21.68 13 1/24+ .85 14.09 13 1/24+ .85 18.75 13 1/24+ .85 19.43 13 1/24+ .85 16.98 13 1/24+ 2.40 12.73 13 1/24+ 2.40 10.12 13 1/24+ 2.40 10.19 13 1/24+ 2.40 17.21 13 1/24+ 2.40

## LINE CONSTRUCTION (CONT'D)

Basic Hourly Rates	Range Benefits
Area 12 - Zone 2 (Cont'd): Operators: Line Truck with Winch or Pole & Steel Handling Operators: Non-Specialized Trucks & Miscellaneous Equipment Groundmen-Truck Drivers Area 13: Cable Splicers Linemen: Heavy Equipment Operators Groundmen & Truck Drivers Area 14: Cable Splicers: Equipment Operators: Linemen Groundmen Area 15: Linemen Technicians Cable Splicers Operators, Class 1 Operators, Class 2 Groundmen Area 16: Cable Splicers: Equipment Operators & Linemen Groundmen Area 17: Cable Splicers: Equipment Operators & Linemen Truck Drivers (Winch), Groundmen	12.96 13 1/24+ 2.40 10.35 13 1/24+ 2.40 10.32 13 1/24+ 2.40 13.70 12 1/24 13.30 12 1/24 11.90 12 1/24 18.24 13 1/24+ 10.66 13 1/24+ .85 19.97 8 1/24+ .85+1 19.37 8 1/24+ .85+1 22.97 8 1/24+ .85+1 15.78 8 1/24+ .85+1 13.98 8 1/24+ .85+1 11.98 8 1/24+ .85+1 19.32 13 1/24+ .85 10.66 13 1/24+ .85 17.33 13 1/24+ 1.85 11.26 13 1/24+ 1.85

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## LINE CONSTRUCTION (CONT'D)

Basic Hourly Rates	Range Benefits
Area 18: Cable Splicers: Linemen: Operators: All Mechanized Equipment Groundmen - Truck Drivers Groundmen Area 19: Cable Splicers Linemen: Equipment Operators Truck Drivers Groundmen Area 20: Cable Splicers: Linemen Equipment Operators Groundmen Area 21: Cable Splicers Equipment Operators & Linemen Truck Drivers (Winch), Groundmen: Groundmen Area 22: Cable Splicers: Equipment Operators: Linemen Truck Driver (Winch), Groundmen: Groundmen Area 23: Linemen Cable Splicers Equipment Operators Truck Drivers: Groundmen Area 24: Cable Splicers: Equipment Operators: Linemen Groundmen	17.59 13 1/24+ 2.85 13.87 13 1/24+ .85 10.70 13 1/24+ .85 18.06 13 1/24+ 2.75 16.80 13 1/24+ 2.75 9.99 13 1/24+ 2.75 9.58 13 1/24+ 2.75 15.83 13 1/24+ .85 13.84 13 1/24+ .85 10.85 13 1/24+ .85 19.18 13 1/24+ 2.90 18.93 13 1/24+ 2.90 12.30 13 1/24+ 2.90 18.95 13 1/24+ 2.90 12.32 13 1/24+ 2.90 19.51 13 1/24+ 1.99 20.88 13 1/24+ 1.99 14.63 13 1/24+ 1.99 9.76 13 1/24+ 1.99 17.24 13 1/24+ 1.60 10.25 13 1/24+ 1.60

## POWER EQUIPMENT OPERATORS:

Statewide, Except  
Columbiana, Mahoning &  
Trumbull Counties:  
Well & Pump Work  
(Including Drilling  
& Repair of All  
Water Wells: Test  
Holes & Wells: &  
Installation &  
Repair of Deep Well-  
Type & Shallow Well-  
Pumps on Water Wells:  
Well Drill & Pump  
Installer

Basic Hourly Rates

Range Benefits

Basic Hourly Rates

Range Benefits

Basic Hourly Rates

Range Benefits

Basic Hourly Rates

Range Benefits

Basic Hourly Rates

Range Benefits

Basic Hourly Rates

Range Benefits

PAID HOLIDAYS:

- A-New Year's Day; B-Memorial Day; C-Independence Day;  
D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving  
Day; and G-Christmas Day
- FOOTNOTES:
- 2 Paid Holidays: C & D
  - 2 Paid Holidays: B and C
  - 1 Paid Holiday: D
  - \$25.00 per year per employee
  - \$50.00 per year per employee
  - 6 Paid Holidays: A, C, E, G, Decoration Day, and Veterans Day
  - 2 Paid Holidays: C and D
  - 1 Paid Holiday: D providing employee has worked 5 consecutive days before and after the Holiday
  - \$96.00 per week per employee; 1 week's paid vacation for 1 year of service; 2 weeks' paid vacation for 5 years; 3 weeks' paid vacation for 10 years and 4 weeks' paid vacation for 17 years' service; 7 Paid Holidays: A through E, G and National Election Day
  - \$30.00 per week per employee
  - 1 1/2 Paid Holidays: The last scheduled workday prior to Christmas and 4 hours on Good Friday
  - 10 Paid Holidays: A through G and Good Friday, Christmas Eve, and New Year's Eve
  - 9 Paid Holidays: A through G, Good Friday and Christmas Eve Day
  - Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 weeks' paid vacation; 11th continuous calendar year - 3 weeks' paid vacation

AREA DESCRIPTIONS

BRICKLAYERS and STONEMASONS:

- Area 1: Adams and Scioto Counties  
Area 2: Allen, Auglaize, Mercer and Van Wert Counties  
Area 3: Ashland, Crawford, Hardin, Holmes, Marion, Morrow, Richland, Wayne (except the Townships of Milton and Chippewa), and Wyandot (except the Townships of Crawford, Richland, Ridge and Tymochtee) Counties  
Area 4: Ashtabula County  
Area 5: Athens County  
Area 6: Belmont, Jefferson (Warren, Mt. Pleasant and Dillonvale), and Monroe Counties  
Area 7: Brown, Butler, Clermont, Hamilton, Preble (Townships of Dixon, Gratis, Israel, Lanier, and Somers), and Warren Counties

AREA DESCRIPTIONS (Cont'd)

BRICKLAYERS and STONEMASONS: (Cont'd)

- Area 8: Carroll, Columbiana (Townships of Butler, Hanover, Knox and West), Stark and Tuscarawas Counties  
Area 9: Champaign, Clark and Logan Counties  
Area 10: Clinton and Highland Counties  
Area 11: Columbiana County (Townships of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem and Unity), Mahoning County and the City of Youngstown  
Area 12: Columbiana (Townships of East Liverpool, Franklin, Madison, St. Clair, Washington, Wayne and Yellow Creek), and Jefferson (Townships of Bush, Creek and Saline) Counties  
Area 13: Coshocton, Fairfield, Guernsey, Hocking, Knox, Licking, Morgan, Muskingum and Perry Counties  
Area 14: Cuyahoga County and Medina County (except the Townships of Chatham, Wadsworth, Guilford, Westfield, Sharon, Lafayette, Harrisville, Homer, Litchfield and Spencer)  
Area 15: Darke, Miami, and Shelby Counties  
Area 16: Defiance, Fulton (except the Townships of Amboy, Fulton, and Swan Creek), Henry (except the Townships of Barlow, Damascus, Liberty, Marion, Monroe, Richfield, Washington and that part of Harrison outside the City limits of Napoleon), Paulding, Putnam and Williams Counties  
Area 17: Delaware, Franklin, Madison, Pickaway and Union Counties  
Area 18: Erie, Hancock, Huron, Ottawa, Sandusky, Seneca, Wood (Perry and Bloom Townships), Wyandot (Tymochtee, Ridge and Richland Townships) Counties and Island of Lake Erie north of Sandusky  
Area 19: Fayette, Pike and Ross Counties  
Area 20: Fulton (Remainder of County), Henry (Remainder of County), Lucas, and Wood (Remainder of County) Counties  
Area 21: Gallia and Meigs Counties  
Area 22: Geauga and Lake Counties  
Area 23: Greene, Montgomery, and Preble (Remainder of County) Counties  
Area 24: Harrison and Jefferson (Remainder of County) Counties  
Area 25: Jackson and Vinton Counties  
Area 26: Lawrence County  
Area 27: Lorain and Medina (Chatham, Harrisville, Homer, Litchfield, and Spencer Townships) Counties  
Area 28: Medina (Remainder of County), Portage, Summit and Wayne (Townships of Milton and Chippewa) Counties  
Area 29: Noble (Remainder of County) and Washington Counties  
Area 30: Trumbull County (except the City of Youngstown)

## AREA DESCRIPTIONS (Cont'd)

## CARPENTERS and PILEDRIEVERMEN:

- Area 1: Adams, Fayette, Gallia, Highland, Jackson, Lawrence, Meigs, Pike, Ross, and Scioto Counties
- Area 2: Allen, Auglaize, Champaign, Clark, Coshocton, Delaware, Fairfield, Franklin, Guernsey, Hardin, Holmes, Knox, Licking, Logan, Madison, Marion, Mercer, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Putnam, Union, Van Wert, and Wyandot Counties
- Area 3: Ashland, Crawford, Erie (East of B & O Railroad Tracks), Huron, Lorain, and Richland Counties
- Area 4: Ashtabula, Cuyahoga, Geauga and Lake Counties
- Area 5: Athens, Hocking, Vinton and Washington Counties
- Area 6: Belmont, Harrison, and Monroe Counties
- Area 7: Brown, Butler, Clermont, Clinton, Hamilton, and Warren Counties
- Area 8: Carroll, Stark, Tuscarawas, and Wayne Counties
- Area 9: Columbiana and Jefferson Counties
- Area 10: Darke, Greene, Miami, Montgomery, Preble and Shelby Counties
- Area 11: Defiance, Fulton, Hancock, Henry, Lake, Lucas, Putnam, and Wood Counties
- Area 12: Erie (West of B & O Railroad Tracks), Ottawa, Sandusky and Seneca Counties and the City of Postoria in Hancock and Wood Counties
- Area 13: Lucas, and Wood Counties excluding the City of Postoria
- Area 14: Mahoning and Trumbull Counties
- Area 15: Medina, Portage, and Summit Counties

## CEMENT MASONS:

- Area 1: Ashtabula, Cuyahoga, Fulton, Geauga, Hancock, Henry, Lake, Lucas, Putnam, and Wood Counties
- Area 2: Brown, Butler, Clermont, Columbiana, Defiance, Erie, Hamilton, Highland, Huron, Lorain, Mahoning, Medina, Ottawa, Paulding, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, Warren, and Williams Counties
- Area 3: Remaining Counties

## ELECTRICIANS:

- Area 1: Adams, Jackson (all but Coal, Jackson, Liberty, Milton and Washington Townships), Pike (Townships of Camp Creek, Marion, Newton, Scioto, Sunfish, and Union), and Scioto Counties
- Area 2: Allen, Auglaize, Hardin, Logan, Mercer, Shelby, Van Wert, and Wyandot (west of Grange, Pitt, and Tymochtee Townships) Counties
- Area 3: Ashland, Crawford, Huron (Townships of Greenwich, New Haven, Richmond, and Ripley), Knox (North half including Clinton, Howard, Liberty, Monroe, and Union Townships), Marion, Morrow, Richland, and Wyandot (Remainder of County) Counties
- Area 4: Ashtabula County (all but Colebrook, Orwell, Wayne, Williamsfield and Windsor Townships)

## AREA DESCRIPTIONS (Cont'd)

## ELECTRICIANS: (Cont'd)

- Area 5: Ashtabula (Remainder of County), Geauga (Townships of Auburn, Middlefield, Parkman, and Troy), Mahoning (Milton Township), Portage (Townships of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris, and Windham), and Trumbull (except Hubbard and Liberty Townships) Counties
- Area 6: Athens, Meigs, Monroe, Morgan, Noble, Vinton (East of Clinton, Elk and Swan Townships), and Washington Counties
- Area 7: Belmont County
- Area 8: Brown, Clermont, and Hamilton Counties
- Area 9: Butler and Warren (excluding Clear Creek, Franklin and Wayne Townships) Counties
- Area 10: Carroll (South of Fox, Harrison, Rose and Washington Townships), Harrison and Jefferson Counties
- Area 11: Carroll (Remainder of County), Columbiana (Knox Township), Holmes, Mahoning (Smith Township), Stark, Tuscarawas (North half excluding Townships of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks), and Wayne (South of Baughman, Chester, Green, and Wayne Townships) Counties
- Area 12: Champaign, Clark and Madison (Townships of Paint, Pike, Someford, Stokes and Union) Counties
- Area 13: Clinton, Darke, Greene, Miami, Montgomery, Preble, and Warren (Remainder of County) Counties
- Area 14: Columbiana County (except Townships of Butler, Fairfield, Knox, Perry, Salem and Unity)
- Area 15: Columbiana (Townships of Butler, Fairfield, Perry, Salem and Unity), Mahoning (excluding Milton and Smith Townships), and Trumbull (Townships of Hubbard and Liberty) Counties
- Area 16: Coshocton, Guernsey, Knox (Jackson, Clay, Morgan, Miller, Milford, Willard, Butler, Harrison, Pleasant, and College Townships), Licking, Muskingum, Perry, and Tuscarawas (South half including Townships of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks) Counties
- Area 17: Cuyahoga, Geauga (Townships of Bainbridge, Chester and Russell), and Lorain (Township of Columbia) Counties
- Area 18: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams and Wood Counties
- Area 19: Delaware, Fairfield, Franklin, Madison (Remainder of County), Pickaway (excluding Deer Creek, Perry, Pickaway, Salt Creek and Wayne Townships), and Union Counties
- Area 20: Erie and Huron (Remainder of County) Counties
- Area 21: Fayette, Highland, Hocking, Jackson (Remainder of County), Pickaway, Pike, Ross, and Vinton Counties
- Area 22: Gallia and Lawrence Counties
- Area 23: Geauga (except Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, and Troy Townships), and Lake Counties

## AREA DESCRIPTIONS (Cont'd)

## ELECTRICIANS: (Cont'd)

Area 24: Lorain (Remainder of County), and Medina (Townships of Litchfield and Liverpool) Counties  
 Area 25: Medina (Remainder of County), Portage (excluding Townships of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris, and Windham), Summit, and Wayne (remainder of County) Counties

## IRONWORKERS:

Area 1: Adams (East half), Gallia, Jackson (South half), Lawrence, Pike (South half), and Scioto Counties  
 Area 2: Adams (West half), Brown, Butler (South half), Clermont, Clinton (South of a line drawn from Blanchester to Lynchburg), Hamilton, Highland (excluding Eastern 1/5 and portion of County), and Warren Counties  
 County line drawn from Marshall to Lynchburg and from the North County line through East Monroe to Marshall, and Warren (South half) Counties

Area 3: Allen (South half), Auglaize, Butler (North half), Champaign (West 2/3), Clark (West 3/4), Clinton (excluding South of a line drawn from Blanchester to Lynchburg), Darke, Greene, Highland (inside lines drawn from Marshall to Lynchburg and from the North County line through East Monroe to Marshall), Logan (West 2/3), Mercer (South half), Miami, Montgomery, Preble, Shelby, and Warren (North half) Counties

Area 4: Allen (North half), Defiance (except portion South of a line drawn from where Rt. #66 meets the North line through Independence to the East County border), Mercer (North half), Paulding, Putnam (except portion East of a line drawn from the North border down through Miller City to where 696 meets the South border), Van Wert, and Williams (except portion East of a line drawn from Pioneer through Stryker to the South border) Counties

Area 5: Ashland, Carroll, Columbiana (W. of a line from Damascus to Highlandtown), Coshocton (E. of a line beginning at NW Co. line going through Walbonding & Tunnel Hill to the south Co. line), Holmes, Huron (S. of Old Rte. #224), Mahoning (S. of Old Rte. #224), Medina (S. of Old Rte. #224), Portage (S. of Old Rte. #224), Richland, Stark, Summit (S. of Old Rte. #224, exclu. city limits of Barberton), Tuscarawas, & Wayne Counties

Area 6: Ashkabula County (Northeastern 1/4)  
 Area 7: Ashkabula (NW 1/4), Cuyahoga, Erie (E 2/3), Geauga (W 1/2), Huron (E. of a line drawn from the North border through Monroeville & Willard), Lake, Lorain, Medina (N. of Old Rte. #224), Portage (W. of a line from Middlefield to Shalersville to Deerfield), & Summit (N. of Old Rte. #224, inclu. city limits of Barberton) Counties  
 Area 8: Ashkabula (S 1/2, inclu. E. of a line from Austinburg to where Rte. #86 crosses the W. Co. line & S. of a line from Austinburg to 2 mi. S. of Richmond on Rte. #7), Columbiana (E. of a line from Damascus to Highlandtown), Geauga (E. of a line from Austinburg to Middlefield & S.), Mahoning (N. of Old Rte. #224), Portage (E. of a line from Middlefield to Shalersville to Deerfield), & Trumbull Counties

## AREA DESCRIPTIONS (Cont'd)

## IRONWORKERS: (Cont'd)

Area 9: Athens, Meigs, Morgan, Noble and Washington Counties  
 Area 10: Belmont, Guernsey, Harrison, Jefferson, Monroe, and Muskingum (except portion West of a line starting at Adams Mill going to Adamsville and going from Adamsville through Blue Rock to the South border) Counties

Area 11: Champaign (Eastern 1/3), Clark (Eastern 1/4), Coshocton (West of a line beginning at Northwestern County line going through Walbonding and Tunnel Hill to the South County line), Crawford (South of Route 30), Fayette, Hardin (except a line drawn from Roundhead to Maysville), Highland (Eastern 1/5), Hocking, Jackson (North half), Knox, Logan (Eastern 1/3), Marion, Morrow, Muskingum (West of a line starting at Adams Mill going to Adamsville and going from Adamsville through Blue Rock to the South border), Perry, Pike (North half), Ross, Vinton, and Wyandot (South of Route 30) Counties  
 Area 12: Crawford (area between lines drawn from where Highway 598 and 30 meet through North Liberty to the North border and from said Highway junction point due West to the border), Defiance (South of a line drawn from where Route 66 meets the North line through Independence to the East County border), Erie (Western 1/3), Fulton, Hancock, Hardin (North of a line drawn from Maysville to a point 4 miles South of the North line on the East line), Henry, Huron (West of a line drawn from the North border through Monroeville and Willard), Lucas, Ottawa, Putnam (East of a line drawn from the North border down through Miller City to where 696 meets the South border), Sandusky, Seneca, Williams (East of a line drawn from Pioneer through Stryker to the South border), Wood and Wyandot (Area North of Route #30) Counties

Area 13: Delaware, Fairfield, Licking, Madison, Pickaway, and Union Counties  
 Area 14: Franklin County

## PAINTERS:

Area 1: Adams, Highland, Jackson, Pike and Scioto Counties  
 Area 2: Allen, Auglaize, Defiance, Hardin, Mercer, Paulding, Putnam, Shelby, Van Wert, and Williams Counties  
 Area 3: Ashland, Crawford, Marion, Morrow, and Richland Counties  
 Area 4: Ashkabula, Cuyahoga, Geauga, Lake, Lorain (Northeastern part), Portage (North of the Ohio Turnpike), and Summit (North of the Ohio Turnpike) Counties  
 Area 5: Athens and Hocking Counties  
 Area 6: Belmont, Harrison, and Jefferson Counties  
 Area 7: Brown, Clermont and Hamilton Counties  
 Area 8: Butler and Warren Counties  
 Area 9: Carroll, Holmes, Stark, Tuscarawas, and Wayne Counties  
 Area 10: Champaign, Clark, Logan, and Madison Counties

## AREA DESCRIPTIONS (Cont'd)

## PAINTERS: (Cont'd)

- Area 11: Clinton, Darke, Greene, Miami, Montgomery, and Preble Counties
- Area 12: Columbiana, Mahoning, Portage (Ravenna Ordnance Depot), and Trumbull Counties
- Area 13: Delaware, Fairfield, Fayette, Franklin, Pickaway, Ross, and Union Counties
- Area 14: Erie, Hancock, Huron, Sandusky, Seneca, and Wyandot Counties
- Area 15: Fulton, Henry, Lucas, Ottawa, and Wood Counties
- Area 16: Gallia, Lawrence, Meigs, and Vinton Counties
- Area 17: Knox, Licking, Muskingum, and Vinton Counties
- Area 18: Lorain County (Remainder of County)
- Area 19: Medina, Portage (up to and including the Ohio Turnpike), and Summit (up to and including the Ohio Turnpike) Counties
- Area 20: Monroe, Morgan, Noble, and Washington Counties

## PLUMBERS: STEAMFITTERS: and PIPEFITTERS:

- Area 1: Adams, Athens, Gallia, Highland, Jackson, Lawrence, Pike, Scioto, and Vinton Counties
- Area 2: Allen, Auglaize, Hardin, Mercer, Shelby, and Van Wert Counties
- Area 3: Ashland, Crawford, Erie, Huron, Knox, Lorain, Morrow, Richland, and Wyandot Counties
- Area 4: Ashtabula, Cuyahoga, Geauga, Lake, Medina (North of Route 18 excluding City of Medina), Portage (North of #303), Summit (North of Route #303, excluding City of Hudson) Counties
- Area 5: Belmont, Monroe (North of Route 78) Counties
- Area 6: Brown, Clermont, Hamilton, & Warren (S 1/3) Counties
- Area 7: Butler, and Warren (N 2/3, N. of Rte. #63, exclu. Lebanon & S. Lebanon) Counties
- Area 8: Carroll (except Townships of Ross, Monroe, Union, Lee, Orange, Perry, and London), Stark and Wayne Counties
- Area 9: Carroll (Townships of Ross, Monroe, Union, Lee, Orange, Perry and London), Coshocton, Guernsey, Holmes, Morgan (South of State Route #78 and from McConneville West on State Route #37 to the Perry County Line), Muskingum, Noble, and Tuscarawas Counties
- Area 10: Champaign, Clark, Greene (Townships of Cedarville, Caesar Creek, New Jasper, Jefferson, and Ross), Logan, and Madison (West of Route #38 including the City of London) Counties
- Area 11: Clinton, Darke, Fayette, Greene (Remainder of County), Miami, Montgomery, and Preble Counties
- Area 12: Columbiana (excluding Washington and Yellow Creek Townships and Liverpool Township, sections 35 and 36 - West of County Road #427), Mahoning, and Trumbull (Hubbard and Liberty Townships, Youngstown Municipal Airport and the Filtration plant of the Mahoning Valley Sanitary District) Counties
- Area 13: Columbiana (Washington and Yellow Creek Townships and Liverpool Township Sections 35 and 36 West of County Road #427), Harrison and Jefferson Counties
- Area 14: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, and Wood Counties

## AREA DESCRIPTIONS (Cont'd)

## PLUMBERS: STEAMFITTERS: and PIPEFITTERS: (Cont'd)

- Area 15: Delaware, Fairfield, Franklin, Pickaway, Ross, and Union Counties
- Area 16: Medina (Remainder of County), Portage (South of Route #303), and Summit (South of Route #303) Counties
- Area 17: Meigs, Monroe (Remainder of County), Morgan (Remainder of County), and Washington Counties
- Area 18: Trumbull County (Remainder of County)

## LINE CONSTRUCTION:

- Area 1: Adams, Athens, Gallia, Lawrence, Meigs, Scioto, Jackson (except Coal, Jackson, Liberty, Milton, and Washington Townships), Pike (Townships of Camp Creek, Marion, Newton, Scioto, Sunfish, and Union), and Vinton (East of Clinton, Elk and Swan Townships) Counties
- Area 2: Allen, Auglaize, Hardin, Logan, Mercer, Shelby, Van Wert, Wyandot (Townships of Crawford, Jackson, Marseil, Mifflin, Ridgeland, Ridge and Salem) Counties
- Area 3: Ashland, Crawford, Huron (Townships of Richmond, New Haven, Ripley and Greenwich), Knox (Townships of Liberty, Clinton, Union, Howard, Monroe, Middleburg, Morris, Wayne, Berlin, Pike, Brown and Jefferson), Marion, Morrow, Richland, and Wyandot (Townships of Sycamore, Crane, Eden, Pitt, Antrim and Tynochtee) Counties
- Area 4: Ashtabula County (except Townships of Colebrook, Orville, Wayne, Williamsfield, and Windsor)
- Area 5: Ashtabula (Townships of Colebrook, Wayne, Orville, Williamsfield, and Windsor), Columbiana (Townships of Butler, Fairfield, Perry, Salem, and Unity), Geauga (Townships of Auburn, Middlefield, Parkman, Burton, and Troy), Mahoning (excluding Smith Township), Portage (Charleston, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris, and Windom Townships), and Trumbull Counties
- Area 6: Belmont County
- Area 7: Brown, Clermont and Hamilton Counties
- Zone 1: Up to and including 25 mile radius from Hamilton County Court House, Cincinnati
- Zone 2: Over 25 mile radius from Hamilton County Court House, Cincinnati
- Area 8: Butler and Warren (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union and Washington Townships) Counties
- Area 9: Carroll (Northern half including Fox, Harrison, Rose and Washington Townships), Columbiana (Knox Township), Holmes, Mahoning (Smith Township), Stark, Tuscarawas (North of Auburn, Clay, Rush, and York Townships), and Wayne (South of Baughman, Chester, Green and Wayne Townships) Counties

## AREA DESCRIPTIONS (Cont'd)

## LINE CONSTRUCTION: (Cont'd)

- Area 10: Carroll (South of Fox, Harrison, Rose, and Washington Townships), Harrison and Jefferson Counties
- Area 11: Champaign, Clark, Cuyahoga, Geauga (Bainbridge, Russell and Chester Townships), Lorain (Columbia Township), and Madison (except Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, and Pleasant Townships) Counties
- Area 12: Clinton, Darke, Greene, Miami, Montgomery, Preble, and Warren (Wayne, Clear Creek, and Franklin Townships) Counties
- Zone 1: Within 11 mile radius of 3rd and Main Streets, Dayton, Ohio
- Zone 2: Beyond 11 mile radius of 3rd and Main Streets, Dayton, Ohio
- Area 13: Columbiana County (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middletown, St. Clair, Washington, Wayne, West and Yellow Creek Townships)
- Area 14: Coshocton, Guernsey, Muskingum, Perry, and Tuscarawas (Remainder of County) Counties
- Area 15: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, and Wood Counties
- Area 16: Delaware, Madison (Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range and Pleasant Townships), Pickaway Townships of Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlentburg, Scioto, Walnut, and Washington), and Union Counties
- Area 17: Erie and Huron (Lyne, Ridgely, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarksfield, Norwick, Greenfield, Fairfield, Pithville, and New London Townships) Counties
- Area 18: Fairfield, Knox (Bulter, Clay, College, Harrison, Hilliar, Jackson, Morgan, Milford, Miller, and Pleasant Townships), and Licking Counties
- Area 19: Fayette, Highland,ocking, Jackson (Coal, Jackson, Liberty, Milton and Washington Townships), Pickaway (Deer Creek, Perry, Pickaway, Salt Creek and Wayne Townships), Pike (excluding Camp Creek, Marion, Newton, Scioto, Sunfish, and Union Townships), Ross, and Vinton (Western half of County, including Clinton, Elk and Swan Townships) Counties
- Area 20: Franklin County
- Area 21: Geauga (excluding Bainbridge, Chester, Russell, Auburn, Middlefield, Parkman and Troy Townships), and Lake Counties
- Area 22: Lorain (excluding Columbia Township), and Medina (Litchfield and Liverpool Townships) Counties
- Area 23: Medina (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinkley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, and York Townships), Portage (Atwater, Aurora, Briarfield, Deerfield, Franklin, Mantus, Randolph, Rayenna, Rootstown, Shalersville, Streetsboro, and Suffield Townships), Summit, and Wayne (Northern half of County) Counties
- Area 24: Monroe, Morgan, Noble and Washington Counties

## LABORERS

## (Excluding Railroad Maintenance, Renovation, and Repair)

- Zone 1: Cuyahoga, Geauga and Lake Counties
- Zone 2: Ashtabula, Erie, Huron, Lorain, Lucas, Mahoning, Medina, Ottawa, Portage, Stark, Summit, Trumbull, and Wood Counties
- Zone 3: Remainder of Counties
- Group 1: Asphalt Laborer; Carpenter Tender; Concrete Curing Applicator; Dump Man (Batch Trucks); Grade Checker; Guardrail and Fence Installers; Joint Setter; Laborers (construction); Landscape Laborer; Mesh Handlers and Placers; Right-of-way Laborers; Riprap Laborer and Grouter; Scaffold Erector; Seal Coating; Surface Treatment or Road Mix Laborer; Sign Installer; Slurry Seal; Utility Man or Handyman; and Waterproofing Laborer
- Group 2: Asphalt Baker; Concrete Puddler; Kettle Man (Pipeline); Machine Driven Tools; Mason Tender; Mortar Mixer; Power Buggy or Power Wheelbarrow; Sheeting and Shoring Man; Surface Grinder Man; Paint Stripper; and Plastic Flushing Machine Operator
- Group 3: Air Track and Wagon Drill; Bottom Man; Car Pusher (without air); Cofferdam (below 25 feet deep); Concrete Saw Man; Cutting with Burning Torch; Form Setter; Hand Spiker (Railroad); Pipelayer; Tunnel Laborer (without air) and Caisson; Undergroundman (working in Sewer and Waterline, Cleaning, Repairing and Reconditioning); Welder Tender (Pipeline); and Sandblaster Nozzleman
- Group 4: Blaster; Mockers; Powder Man; Top Lander; Wrencher (Mechanical Joints and Utility Pipeline); and Varner
- Group 5: Concrete Crew in Tunnels; Curb Setter and Cutter; Gunnite Nozzle Man; Miner without air; Utility Pipeline Tapper; Waterline Caulker; and Welder

## POWER EQUIPMENT OPERATORS

## Zone 1 - Columbiana, Mahoning, and Trumbull Counties

Class 1: Asphalt Heater Planer; Austin Western and similar type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Beam Builder-Automatic; Backfiller with drag attachments; Boat Derrick; Boat-Tug; Boring Machine attached to Tractor; Bulldozer; C.M.I. Road Builder and similar types; Cable Placer and Layer; Carrier-Straddle; Carryall-Scrapper or Scoop; Chicago Boom; Compactor with blade attached; Concrete Spreader; Finisher Combination; Crane; Crane-stationary or climbing; Crane-Electric Overhead; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Diggers-wheel (not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or similar type; Easy Pour Median Barrier Machine; Hoist-Motor; Hoist-Motor; Hoist-Motor; Hoist-2 or 3 drum; Jackall; Jumbo Machine; Kocal or Kuhlman; Land-Sealing vehicle; Loader-Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Chip Harvester with Boom; Mucking Machine; Paver-Asphalt; Finishing Machine; Paver-Road Concrete; Paver-Slipform; Place Concrete Machine; Post Driver; Power Driven Hydraulic Pumps and Jacks; Pumpcrete Machine; Regulator-Ballast; Hydraulic Power Unit not attached to Rig for Pile Drilling; Rigs-Drilling; Shovels; Spiker-master; Stonecrusher; Tie Puller and Loader; Tie Tamper; Tractor-double boom; Tractor with attachments; Trucks-Boom; Truck-tire-assigned to job; Trench Machine; Tunnel Machine (Mark 21 Java or similar); Whirley

Class 2: Asphalt Plant; Bending Machine; Boring Machine; Chip Harvester without boom; Cleaning Machine; Pipeline type; Coating Machine; Pipeline type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Machine; Grease Truck Operator; Groat Pump; Gunite Machine; Huck Bolting Machine; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Fireman; Power Broom; Refrigeration Plant; Sagen Derrick; Seeding Machine; Self-propelled Mobile Vibrator Compactor or Roller; Hoist, single drum; Soil Stabilizer (Pump type); Spray Cure Machine, self-propelled; Straw Blower Machine; Sub-grader; Tube Finisher or Broom C.M.I. or similar type; Tugger Hoist

Class 3: Batch Plant, job related; Boiler Operator; Curb Builder (self-propelled); Generator, steam; Hydraulic Manipulator Crane; Jack, hydraulic driven; Mixer, Concrete; Mulching Machine; Pin Puller; Pulverizer; Pump; Road Finishing Machine (Pull type); Roller; Saw, concrete, self-propelled; Spray Cure Machine, motor powered; Spreader (Side Driver Shoulder attachment); Stump Cutter; Tractor; Trencher, Form; Water Blaster

Class 4: Air Curtin Destructor and similar type; Brake Man; Compactor; Conveyor; Conveyor 12 feet or under other than servicing Bricklayers; Deck Hand; Drill Wagon; Fireman; Generator Sets; Heaters, portable power (2 to 5); Ladavator; Roller (Walk Behind, 1 ton and over); Steam Jenny; Synbons; Tender, Mechanic; Jack Hydraulic (Railroad); Vibrator, gasoline; Welding Machines (2) (fuel burning)

## POWER EQUIPMENT OPERATORS (Cont'd)

## Zone 1 (Cont'd)

## Class 5: Oiler

Class 6: Rigs, Pile Driving or Caisson type; Pigs (Pile Hydraulic Unit attached)

Zone 2 - Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage and Summit Counties

Zone 3 - Remaining Counties

Class A: Air Compressor on Steel Erection; Asphalt Plant Engineers (Cleveland District only); Boiler Operator on Compressor or Generator when mounted on a rig; Cableways; Combination Concrete Mixer & Tower; Concrete Plants (over 4 yd. cap.); Concrete Pumps; Cranes (including Boom Trucks, Cherry Pickers); Derricks; Draglines; Dredges (dipper, clam or suction); Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Crew (operator-boist or winch); Hoos; Hoisting Engines; Hoisting Engines on Shaft or Tunnel Work; Industrial-type Tractor; Jet Engine Dryer (D8 or D9) Diesel Tractor; Locomotives (Standard Gauge); Maintenance Operator Class A: Mixer, Paving (Single or Double Drum); Mucking Machines; Multiple Scraper; Piledriving Machines; Power Shovels; Quad 9 (double pusher); Refrigerating Machine (Freezer Operation); Rotary Drill on Caisson Work; Side-Booms; Slip-Form Paver; Tower Derrick; Tree Shredder; Trench Machine (over 24" wide); Truck Mounted Concrete pumps; Tug Boat; Tunnel Machine and/or Mining Machines; Wheel Excavator

Class B: Asphalt Paver; Automatic Subgrader Machine, Self-propelled (CMI type); Boring Machine Operator (more than 48"); Bulldozer; Endloader; Kolman-Loader (production type-Dirt); Lead Grease Man; Maintenance Operators Class B (Exclu. Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, & Medina Counties); Power Grader; Power Scrapers; Push Cat; Trench Machine (24" wide & under)

Class C: A-Frames; Air Compressor on Tunnel Work (low pressure); Asphalt Plant Engineer (Exclu. Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, & Medina Counties); Locomotive (narrow gauge); Mixers, Concrete (more than one bag cap.); Mixers, one bag cap. (side loader); Power Boilers over 15 lb. pressure; Pump Op. installing & operating Well Points; Pumps (4" & over discharge); Rollers - Asphalt; Utility Operator (Small Equipment); Welding Machine & Generators

Class D: Back Filler; Bar, Joint & Mesh Installing Machine; Batch Plant; Boring Machine Operators (48" or less); Bull Floats; Burlap & Curing Machines; Compressor (Portable, Sewer, Heavy, & Highway); Concrete Plant (Cap. 4 yd. & under); Concrete Saw (Multiple); Conveyors (highway); Crushers; Deckhand; Drill, highway (with integral power); Farm-type tractor with attachments (highway); Finishing Machines; Fireman, Floating Equipment; Fork Lift (highway), except masonry; Form Trenchers; Hydro Hammer; Hydro Seeders; Pavement Screder; Plant Mixers; Post Driver; Post Hole Digger (power auger); Power Brush Burner; Power Form Handling Equipment; Road Widening Trencher; Rollers (brick, grade, macadam); Self-propelled Power Spreaders; Self-propelled Power Subgraders; Steam Fireman; Tractor (pulling sheepsfoot roller or grader); Vibratory Compactors (with integral power)

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POWER EQUIPMENT OPERATORS (Cont'd)  
Zones 2 and 3 (Cont'd)

Class 2: Drum Fireman (asphalt plant); Fork Lift (masonry); Inboard-Outboard Motor Boat - Launch; Power Scrubber; Power Sweeper; Oil Heaters (asphalt plants); Oilers; Power Driven Heaters; Pumps (under 4" discharge); Tenders; Tire Repairs; 5 VAC/ALLS

TRUCK DRIVERS

Zone 1 - Cuyahoga, Geauga, and Lake Counties

Class 1: Straight and Dumps (including Asphalt); Straight Fuel

Class 2: Semi Fuel; and Semi Tractor Drivers

Class 3: Ready-mix (Agitator or non Agitator); Bulk Concrete Drivers; Dry Batch Trucks; Carry-all Driver; Darts; Double Hook-up Tractor Trailers including Team Truck and Railroad Siding; Euclids; Extra Long Trailers and Semi Pole Trailers; Fork Lifts; Hi-lifts; Low Boys; Semi-tractor and Tri-axle Trailer; Tag along Trailer; Expandable Trailers; Tandem Tractor and Tandem Trailer; and Tri-axle Trailer; Tandem Trailer and Tri-Axle Trailer; Tank Asphalt Spreaders; Tourners; rockers; Loads or Towing Requiring Road Permits

Zone 2 - Remainder of the State

Class 1: Asphalt Distributors; Batch Trucks; 4 Wheel Service Truck; 4 Wheel Dump Trucks; Oil Distributors

Class 2: Tandems

Class 3: Fuel Trucks; Pole Trailers; Ready Mix Trucks; Seal-tractor Trucks; Asphalt Oil Spraybar Man

Class 4: All Trucks, five axle and over

Class 5: Asphalt Oiler Spraybar Man when operated from cab

Class 6: Euclid Wagons; Euclid End Dumps; Heavy Duty Equipment over 12 cu. yd. capacity; Low Boys

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

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# Registered Federal Trade

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Friday  
May 24, 1985

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## Part III

### Department of Commerce

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International Trade Administration

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15 CFR Part 373

Revision of Distribution License  
Procedure; Final Rule

## DEPARTMENT OF COMMERCE

## International Trade Administration

## 15 CFR Part 373

[Docket No. 40110-5076]

## Revision of Distribution License Procedure

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** On January 19, 1984 (49 FR 2264-2267) the Office of Export Administration (OEA) solicited public comments on a proposal to amend the "Distribution License" (DL). Following evaluations of extensive comments, a revised proposal was published for comment on September 12, 1984 (49 FR 35790-35798). OEA has reviewed public comments on the revised proposal and is now issuing a final rule to amend the Distribution License procedure.

The Distribution License (DL) authorizes exports from the United States of certain commodities under an international marketing program to consignees that have been approved in advance as foreign distributors or users. OEA has been seeking ways to improve monitoring and control of the program without creating unnecessary roadblocks for legitimate exports.

The final rule achieves this objective by establishing more stringent eligibility requirements for license applicants; imposing additional internal controls over consignee and license holder activities under the procedures, including screening of customers; requiring more specific guidance from distribution license holders to foreign consignees on the regulatory restrictions of the distribution license procedure; improving the programs for following up with and informing foreign consignees of regulatory requirements; and imposing new requirements for controls on drop shipments, intratransit shipments, and sales to authorized reexport territories.

Increased emphasis has been placed on establishing the reliability of parties to licenses, by means such as pre-license audits of selected applicants. Key observations that form the basis for several revisions were described in the September 12, 1984 issuance at 49 FR 35792. The final rule follows the general approach proposed in September.

The DL is a special privilege that provides significant flexibility to make shipments without obtaining an individual validated license, but, in turn, requires strict compliance by the license holders and their approved consignees with the Department's new program of

export controls. Consequently, all parties involved in the DL procedure should be aware that:

- Top management of firms must be directly involved in assuring compliance and maintaining the quality of the control programs.

- Effective utilization of the DL requires that license holders and their consignees know their customers. Effective means must be devised to establish the bonafides and reliability of recipients of commodities under the DL.

- Adequate resources must be committed to comply with the new DL control requirements. The special privilege can only be granted if proper steps are taken to safeguard the national security.

**EFFECTIVE DATE:** This rule is effective July 23, 1984. Grace periods for various provisions beyond the general effective date are specified below.

**FOR FURTHER INFORMATION CONTACT:** Dan Hill, Multiple Licensing Branch, Office of Export Administration, Telephone: (202) 377-3287 or 377-4196.

**SUPPLEMENTARY INFORMATION:**

## Revision of Distribution License Procedure

The Department received about 100 written comments and held public hearings in Boston, Dallas, Minneapolis, and San Francisco. Most comments supported the Department's objective of tightening controls over the procedure without establishing mere mechanical qualification standards. All comments and presentations at public hearings were carefully considered in formulating the final rule. Of equal consideration were lessons learned from the Department's increased audit activity throughout 1984. While the Department did weigh the impact of the final rule on small business, and the burden associated with the final rule in general, the overriding consideration of the Department was the effectiveness of the procedure in meeting the export control policies of the United States.

## Special Licensing Privilege and Compliance

Under the distribution license, the obligation for ensuring the suitability of customers is shared by the licensee and approved foreign consignees. Accordingly, only firms with a strong commitment and willingness to assume this responsibility and with sound control mechanisms will be authorized to make use of the distribution license privilege. The length of time an exporter has been in business or the size of an exporter are not considered determining

factors in ability to administer controls over transactions under the procedure. The Department reaffirms its position that the Distribution License is a special privilege, reserved for firms willing to commit the resources necessary to remain in strict compliance with the regulations. Failure by license holders or their consignees to implement required internal controls or properly use the procedure is the basis for suspension, limitation or revocation of the privilege under 15 CFR 373.1(f), subject to the Department's established appeals provisions in 15 CFR Part 389. Although OEA will apply stringent standards in screening proposed participants and is committed to a strong audit program, the final rules also place a high level of responsibility on the license holders. A firm unwilling or unable to assume responsibility for compliance with the DL procedure should utilize the individual license procedure.

## DL Holder Internal Control Requirement

The final rule emphasizes internal control by the license holders and their foreign consignees. Each license holder must have in place an effective and comprehensive internal control program sufficient to ensure compliance with the regulations and any special conditions on the license. Because specific requirements did not exist previously, it will take most license holders some time to evaluate current programs against the new requirements and implement requisite enhancements. To aid in preparation of these internal controls, OEA will be issuing a set of guidelines prior to the effective date of the regulations, which will be mailed to all DL holders and pending applicants. Other parties who desire a copy of the guidelines should contact Mr. David Flynn, Director, Systems Analysis and Review Unit, Multiple Licensing Branch, Office of Export Administration, Room 2087, P.O. Box 273, Washington, D.C. 20044.

The requirement for an internal control program, as proposed in September, 1984, is maintained in the final rule, but elements have been added to cover direct shipments to consignee customers (drop shipments), order processing systems affixing responsibility with the license holder firm, and controls over in-transit and inbound shipments. Clarifications include extension of denied parties screening to corporate activities such as servicing, hardware sales, software sales and training programs; and programs for informing and educating consignees on the regulatory requirements and any changes thereto.

Effective internal control requires a corporate commitment at all levels. All firms will be required to have a clear statement of policy emanating from management concerning DL compliance. Firms will be required to identify positions and incumbents in the corporation and consignee firms charged with administration of the internal control program. The portion of the September 12 proposal dealing with a process for screening one class of customers, original equipment manufacturers ("OEMs"), has been replaced with standards for screening all customers against a high diversion risk profile. A procedure has been established for confirming the reliability of potentially suspicious customers, involving the foreign consignees, the license holder, and the Department. This change in emphasis will provide a stronger and more realistic basis for screening of potential customers.

The September proposal caused some confusion on the respective internal control responsibilities of the license holder and foreign consignees. The final rule provides separate elements of internal control for consignees and requires foreign consignees to certify to an internal control program prior to their approval by OEA.

#### Eligibility Standards

The September proposal provided for waiver of a one-year minimum relationship between license holders and potential consignees. The intent of the requirement was to provide some basis for license holders to judge the reliability of consignees. Further analysis has led OEA to conclude that there are equally effective means to assess reliability and that these should be given consideration. The final rule calls for evidence of consignee reliability and suggests other indicators of reliability, such as an extensive individual licensing history or approval on other distribution licenses.

The final rule also establishes reliability criteria for license holders. These requirements must be satisfied at all times. In evaluating reliability OEA will consider whether the exporter (1) demonstrates the technical expertise and possesses the internal systems necessary to comply strictly with the DL procedure, and (2) has committed the necessary resources to implement adequate internal control programs. In addition, OEA will consider any credible adverse information it has concerning the applicant.

#### Reexport Notification

In January 1984, OEA had proposed that distributors under the DL obtain

written assurances from their customers against unauthorized reexports. Many of the comments stated foreign nationals would object to the requirement and would refuse to comply when competitive commodities of foreign origin were available. The purpose of the proposed provision was to alert recipients of commodities under the procedure of reexport restrictions. The Department recognized that the written certification would not discourage an individual who intends to divert commodities. Accordingly, the September proposal substituted for this a notification on the invoice that reexport authorization will be required when approved consignees resell U.S. origin commodities outside countries listed in Supplement No. 2 to 15 CFR 373. Many comments on the September proposal considered this modification burdensome and inappropriate for certain types of customers and suggested that it be eliminated. OEA considers this requirement to be necessary to protect the national security by informing foreign purchasers of requirements imposed by the Export Administration Regulations. Without this requirement, customers purchasing U.S. commodities from DL consignees might not be aware of U.S. requirements and could jeopardize their future ability to obtain U.S. commodities. The notification requirement is retained in the final rule, and may be imposed in certain cases (e.g. sensitive computer equipment) on transactions involving Supp. No. 2 countries. OEA will consider, however, other means individual applicants may propose for notifying customers of the U.S. reexport requirements. Sales to retail customers and foreign governments are exempted from the requirement.

#### Direct Shipments to Consignees' Customers (Drop Shipments)

The September proposal provided for more specific definition of the "drop shipment" provisions, under which an approved consignee can request either the license holder or another approved consignee to ship directly to the consignee's customer. In arriving at the September proposal, OEA had noted that drop shipments provide improved paper trails in that records on ultimate customers are maintained by both the shipper (license holder or consignee) and the requesting consignee. Also the procedure permits a screening of customers by both the shipping party and requesting consignee. The September proposal would have required that billing for such drop shipments be from the requesting consignee to his customer. Many

commenters pointed out the practical impossibility of complying with this requirement in many transactions, including financing, terms in letters of credit, import duty considerations, and foreign exchange consequences. OEA has concluded that the billing pattern is not of primary concern in the control process as long as accurate records are kept to allow audit of each transaction. The billing requirement has been deleted from the final rule. Under the final rule, firms utilizing drop shipments must include procedures for handling such shipments in their internal control systems.

#### Sales or Reexport Territory

A sales or reexport territory includes those countries to which a consignee is specifically authorized to reexport commodities received under the distribution license. The earlier proposals would have required evidence in six sales of any type in each country within a distributor's authorized sales territory, although the September proposal would have dropped the requirement for countries listed in Supplement No. 2 to 15 CFR Part 373. Many of the comments on the September proposal claimed that this requirement would be impossible to meet for many consignees, but that continued access to these markets through the DL was essential to the license holder's competitive position and to open new markets. The intent of the requirement was not to place arbitrary limits on sales territories, but rather to ensure that the territories being requested were manageable, and realistic, and justifiable. In the past, many consignees have submitted speculative lists of countries for which reexport privileges were sought. This is no longer permitted. The final rule requires all resellers, not simply distributors as was previously the case, to certify that there have been six sales of *controlled commodities* in each country of the authorized reexport territory. This provides a reasonable boundary with which to assess legitimate need for a reexport territory and familiarity with markets. The certification or justification of reexport territory is to be made by either the applicant in the comprehensive narrative statement on the application, or by the reseller consignee on the Form ITA-6052P, not by both parties as proposed in September. Under the final rule, firms will be required to have controls over the procedure in their internal control programs. When adequate justification can be furnished, OEA will consider approving reexport

territories on some basis other than six sales. DL holders are expected to closely scrutinize current and future proposals by resellers for far reaching reexport territories.

#### Permissive Reexports

The regulations (15 CFR 374.2) permit a limited range of reexports of U.S. origin products by any party without obtaining prior written authorization of OEA. The September proposal would have allowed certain types of permissive reexports by DL consignees but deleted others as inapplicable or unnecessary. Comments noted that the GLV (shipments of limited value) and GTE (temporary exports) permissive provisions were needed by many consignees to exhibit or ship samples into countries outside their authorized sales territories in order to test the waters for possible new territories. The ability of approved consignees to make permissive reexports is retained in the final rule. For consignees that are not the same legal entity as a U.S.-GTE registrant, OEA has provided elsewhere in the final rule a procedure for approved DL consignees to provide a certification and seek eligibility to make temporary exports for demonstration or exhibit. The Department notes that there is no national security basis for restricting this privilege for DL participants when it is freely available to all other foreign parties and, unlike other foreign parties, distribution license consignees are subject to OEA audits.

#### Commodity Descriptions

The proposals had required that DL applications list commodities by commodity control list (CCL) entry and paragraph. Commenters claimed this would impose a burden on many exporters with diversified product lines and questioned the benefits to the control program from this requirement. The purpose of the proposal was to assure that OEA has more accurate knowledge of what commodities are being shipped under the DL. That purpose continues to be valid and the requirement is retained in the final rule. Reevaluation, moreover, indicated that further steps were necessary to assure that exporters would be fully aware of limits on the commodities eligible for DL shipment. Consequently, each commodity listing on the application must specifically identify portions of the entry or paragraph that are included in Supplement No. 1 to 15 CFR Part 373 as ineligible for DL shipment. This will help assure that license holders are fully aware of excluded commodities. The rule is clarified to permit listing to the entry number only, without paragraphs,

when an exporter expects to be shipping a broad range of goods within a CCL entry. Listing of subentries in this situation would be an unnecessary burden. When an exporter will be shipping only within certain paragraphs, the applicable paragraphs must be listed.

#### Commodity Restrictions

The former proposal would have added certain commodities to Supplement No. 1 to 15 CFR Part 373, making them ineligible for shipment under the DL to all or most destinations. The September proposal would have added a new Supplement No. 4 to 15 CFR Part 373, listing commodities that can be exported under the DL only to end-users pre-approved by OEA. Comments cited difficulties in matching foreign competition, particularly when shipping manufacturing equipment to legitimate electronics manufacturers abroad. The final rule retains these requirements with some clarification. First, it clarifies that the additions to Supplement No. 1 and the items in the new Supplement No. 4 are not excluded or limited under the Project License and repair parts and components for such items are not excluded under Service Supply Licenses. Second, it clarifies that complete machines only, and not parts to repair such machines, are restricted. Third, it clarifies that the digitally controlled test equipment exceeding 20 MHz restricted by Supplement No. 4 and the digitally controlled test equipment exceeding 40 MHz excluded by Supplement No. 1 are *only* those used for the testing of individual digital integrated circuits, (ICs) and not those for testing boards or electronic assemblies, considered by the Department to be less sensitive than IC production. Fourth, it deletes the proposal to add oscilloscopes exceeding 350 MHz to Supplement No. 1 and instead adds oscilloscopes exceeding 500 MHz to Supplement No. 4.

Because of the enhanced control of commodities as a result of the rule changes, the Department is raising the technology levels of computers authorized for shipment under the procedure. Specifically, under Supplement No. 1, entities located in countries listed in Supplement No. 2 are authorized to receive electronic computers with a processing data rate (PDR) of 1000 million bits per second (up from 225). The limits in Supplement No. 1 are based on the floating point PDR.

In addition, the Department is continuing to review the computer PDR restrictions for shipment to countries listed in Supplement No. 3 or excluded from both Supplement Nos. 2 or 3. That

review is expected to be completed within 60 days and should result in changes in the authorized PDR levels for many countries.

In recognition of the need for particularly careful controls on the semiconductor manufacturing equipment under CCL entry 1355A that has been added to Supplement No. 1 to Part 373, OEA will allow DL exports of this equipment under closely monitored procedures that will maintain greater control than is normally provided by an individual validated license. Export of these items under the DL may be authorized if:

- The exporter has been determined by OEA to be a U.S. manufacturer of semiconductors or semiconductor manufacturing equipment;
- The foreign customers have been approved in advance by OEA;
- The foreign customers are end-users of the equipment and are engaged in the manufacture of semiconductor devices; and
- The exporter describes a means that is satisfactory to OEA to verify that the equipment reaches the specified customers and to assure that it is not subsequently transferred without the specific authorization of the U.S. Government.

To further ensure commodities exported under Distribution License are not diverted, a restriction has been placed on the sale or transfer of commodities received under Distribution License to entities controlled by governments in Country Groups Q, S, W, Y or Z plus Afghanistan.

OEA has the right, currently exercised administratively, to remove particular commodities deemed sensitive by OEA from any license or to place special conditions or controls on such commodities to specified destinations. Also, the final rule will require that individual validated licenses be obtained for transactions with firms or entities communicated to license holders or published in the *Federal Register*. The new instructions to the Form ITA-6052P require proposed consignees who will be incorporating U.S. commodities into products essentially of foreign manufacture to describe more specifically the end-product and the end-uses for such product. This will allow OEA to make informed judgments on the activities of consignees, the consignees' proposed reexport territories, and the adequacy of their internal control programs.

#### Classes of Consignees

In the course of audits of DL holders and consignees subsequent to the

January 1984 DL proposal, the Department found that certain consignees classified as end-users were making minor modifications to U.S. commodities and treating the end product as a product of foreign manufacture. In September, to clarify that such products require specific U.S. reexport authorization, the definition of end-users was narrowed. The unintended effect of the change was to cause many reseller consignees to be arbitrarily treated as distributors, thereby requiring the DL holders to have contracts with the consignees to authorize reexports (a regulatory requirement for consignees distributing product in the form received). To resolve this difficulty, OEA has dropped the contract requirement and clarified the definition of end-users. The new rule treats all other consignees as resellers. OEA will require foreign consignees to provide sufficient detail on the Form ITA-6052P for OEA to make the correct classification. The final rules clarify which DL provisions apply to firms functioning as end-users, and those functioning as resellers. Also, all consignees will be subject to uniform requirements, regardless of their relationship with the DL holder (controlled-in-fact, contract consignee, independent reseller).

The final rule more clearly describes the recordkeeping and other requirements that will be imposed on these two types of consignees.

#### Impact on Small Business

A number of comments questioned the effect of the proposals on small business. Because in many instances adoption of proposals intended to relieve burdens on small businesses were inconsistent with tightening control over the procedure, they could not be adopted. To address these concerns, however, the final rule makes some changes. Previously, the regulations have described the DL as intended for firms with "extensive foreign distribution." This provision has been challenged as being vague and discriminatory. The phrase has been deleted from the final rule in favor of a general requirement that an applicant have three or more foreign consignees. Except in unusual circumstances, one or two consignees can be served effectively with individual licenses. Some flexibility is retained in certain provisions, such as the one-year relationship with consignees, to accommodate small firms. Other requirements, such as internal control systems and familiarity with product restrictions, are considered basic to effective control of the procedure and

are continued in the final rule. Exporters who are not willing to make the effort to assure proper control may submit individual license applications so that OEA can assume this function. Pursuant to § 373.3(o) of the final rule, OEA will consider requests for relief from provisions for small firms that demonstrate their reliability and possess sound internal control programs.

#### Other Provisions

Various other provisions, such as the expanded audit program and extended validity period, are retained without substantial change. Comments on these provisions were generally favorable. The final rule includes, in new supplements to the regulations, clear instructions for exporter and foreign consignee completion of the Forms ITA-622P and ITA-6052P. It reorganizes portions of the regulation to group more logically all provisions relating to consignees and to applicants and license holders. Reexport provisions and records provisions are clarified. A 90-day period is established for the processing of distribution licenses, and other deadlines for completing certain processing steps are described. As mentioned in the September proposal, OEA anticipates that other countries may be able to demonstrate export control programs that warrant the same or comparable treatment afforded Supplement No. 2 countries under this rule. If such action becomes appropriate, it will likely be accomplished through creation of a new supplement.

#### Grace Periods

The final rule establishes several new requirements that may necessitate granting additional time beyond July 23, 1985 for exporters and their consignees to establish systems for complying with the Distribution License regulations. The following grace periods are provided:

1. By August 22, 1985 all firms currently holding Distribution Licenses are required to certify by letter to OEA that they are reviewing their internal control programs and to commit to having in place a final program by December 23, 1985. Foreign consignees shall have in place their new internal control programs by April 23, 1985. The letter must include the firm's V number and the expiration date of the license and should be addressed to Mr. David Flynn, Director, Systems Analysis and Review Unit, Multiple Licensing Branch, Office of Export Administration, Room 2087, P.O. Box 273, Washington, D.C. 20044, with the notation "DL Internal Control" appearing on the face of the envelope. If a letter is not received in the time stated above, the license will

be automatically suspended. OEA will review internal control programs in the course of scheduled audits and may request that copies be submitted for review at any time. License holders submitting certifications should *not* send copies of their internal control programs unless specifically requested by OEA.

2. Supplement No. 4 (§ 373.3(b)(2)) Commodity Limitations. If the name and address of each party proposed to receive commodities restricted by Supplement No. 4 is submitted to the Multiple Licensing Branch of OEA by June 24, 1984, then the DL procedure may be automatically used for shipments to such recipients, unless otherwise expressly prohibited by OEA. In all other cases, no shipments of Supplement No. 4 commodities may be made until expressly authorized by OEA.

3. All license holders are required to transmit to all consignees by August 22, 1985 information on or copies of the provisions in the final regulations applicable to the activities of the consignee. Such transmittal must require confirmation of receipt by the consignee and agreement to comply with the new regulatory requirement. Consignees that fail to confirm receipt by September 23, 1985 and to certify that they will have in place the required internal control program by May 23, 1986 shall be reported to OEA by the license holder for removal from the license procedure. In addition, the report shall list in alphabetical order, followed by their applicable three digit numbers, the consignees that have made the requisite certification. The license holder must submit this report to OEA by October 21, 1984.

4. Distribution License holders with renewal applications pending before the Department will be subject to the requirements specified in paragraphs 1 and 2 above. Similarly, license holders with amendments pending to extend the validity period of a license are subject to the requirements.

5. Applications received by OEA prior to July 23, 1985 will be processed in accordance with the regulations applicable at the time of submission. Such applications that are approved by the Department will be conditional for a period of six months from the date of validation during which period the new licensee must develop an internal control program and certify its existence to the Department. The transmittal letter to consignees must include all elements of § 373.3(g)(3). New consignees shall be required to confirm receipt of the transmittal letter to the license holder and certify willingness to comply with

the new regulatory requirements, including the establishment of an internal control program. Supplement No. 1 and Supplement No. 4 commodity exclusions and limitations will take effect as specified above. Provided the internal control certification is timely presented to OEA, the validity period for such approvals will be one year. Amendments to extend for an additional two years must include all information required of new applicants under this final rule, e.g., commodity descriptions, comprehensive narrative statements, etc.

6. A current license holder whose distribution license expires within 30 days after July 23, 1985 who requests in writing to OEA will be authorized an extension of up to 90 days from the expiration date of the current license, to bring the application into line with the new requirements subject to the limitations specified in paragraphs 1 and 2 above.

#### Rulemaking Requirements

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date are inapplicable. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation was issued in proposed form and public comment was solicited.

2. This rule contains a collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Revisions to the existing information collection requirements are pending approval by the Office of Management and Budget under control number 0625-0052. Comments from the public on the collection of information contained in the rule should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20530, Attention: Desk Officer for the Department of Commerce/International Trade Administration.

3. Since a notice of proposed rulemaking was not required by law to be published for this rule, this rule is not a rule within the meaning of section 601 (2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule pertains to a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of

Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

#### List of Subjects in 15 CFR Part 373

##### Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

#### PART 373—[AMENDED]

1. The authority citation for 15 CFR Parts 368-399 continues to read as follows:

Authority: Sec. 203, 206, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985).

2. Section 373.1 is amended adding a paragraph (f) reading as follows:

##### § 373.1 Introduction.

(f) *Administrative Actions.* Failure to strictly comply with all conditions and requirements applicable to any special licensing procedure described in this Part 373 by license holders or consignees increases the risk of diversion contrary to U.S. national interests. Accordingly, if OEA is not satisfied that such conditions and requirements are being complied with and maintained, or that control system employed by parties to such licenses are adequate, OEA may, in addition to any enforcement action that may be taken to impose sanctions if a violation of the Export Administration Regulations is found, take an licensing action it deems appropriate, including the following:

- (1) Suspend privileges under the special license in whole or in part or impose any conditions thereon;
- (2) Revoke the special license in whole or in part;
- (3) Delete or restrict foreign consignees;
- (4) Restrict commodities that may be shipped under the special license;
- (5) Require that certain exports or reexports be individually authorized by OEA;
- (6) Restrict parties to whom consignees may sell; or
- (7) Require that a license holder provide an audit report to OEA of selected consignees or overseas operations.

Actions taken pursuant to this paragraph (f) may be appealed under Part 389.

3. Section 373.3 is revised to read as follows:

#### § 373.3 Distribution License.

A Distribution License procedure is established that authorizes exports of certain commodities under an international marketing program, generally to three or more consignees that have been approved in advance as foreign distributors or users. This procedure is a special privilege reserved for firms with a thorough knowledge of and experience with the Export Administration Regulations, and an internal control mechanism to assure strict compliance with the requirements of the license. Only firms that demonstrate the ability to adhere to the Distribution License requirements may participate. Thus, there is not an automatic privilege to participate in the Distribution License procedure. Participants must establish and maintain eligibility and assume responsibility for their activities under the license. License holders and their approved consignees will be audited at intervals to assure that the Distribution License procedure is being used properly. The Distribution License procedure is subject to the limitations in § 373.1.

(a) *Eligible countries and end-use restrictions.* (1) The Distribution License procedure may authorize exports and reexports to:

- (i) All countries in Country Group T; and
- (ii) All countries in Country Group V, except Afghanistan, Iran and the People's Republic of China.

(2) The Distribution License procedure may not be used for export or delivery of commodities to nuclear end-users or for nuclear end-uses outside of countries listed in Supplement No. 2 or Supplement No. 3 to Part 373. For purposes of this § 373.3(a)(2) only, a "nuclear end-use" is any activity involved in the design, construction, fabrication, operation or maintenance of a nuclear reactor or power plant, uranium exploration, mining or milling operations, uranium fuel fabrication, particle accelerators and other high energy physics research, and nuclear waste management or storage facilities; and a "nuclear end-user" is any entity, governmental or private, that either directly or indirectly is involved in any of the activities described above. It is the responsibility of any person supplying commodities to an end-user under the Distribution License to determine if the end-user is directly or indirectly involved either in a nuclear end-use as described above, or in sensitive nuclear end-uses described in (b)(1)(i) of this section, that require for all destinations individual validated

licenses pursuant to § 378.3. Caution should be exercised in evaluating the end-uses before processing orders for commodities under a Distribution License to institutes of science and technology, radiological facilities, conventional weapons and armaments research and development establishments, and other military entities.

(b) *Ineligible or restricted commodities.* (1) The following commodities are ineligible for export or reexport under the Distribution License procedure and must be shipped under an individual validated license or specific reexport authorization:

(i) Commodities for sensitive nuclear uses described in § 378.3;

(ii) Commodities listed in Supplement No. 1 to Part 373 (except as authorized by a footnote);

(iii) Electronic, mechanical or other devices, as described in § 378.13(a), primarily useful for surreptitious interception of wire or oral communications;

(iv) Commodities listed in a Supplement to Part 377 as being under short supply controls;

(v) Aircraft parts and accessories covered by §§ 390.6 and 390.7; and

(vi) Commodities intended for firms that the license holder or consignee knows or has reason to know are controlled in fact by government-controlled entities of Country Groups Q, S, W, Y, or Z, or Afghanistan.

(2) Commodities listed in Supplement No. 4 to Part 373 are subject to certain restrictions when exported under a Distribution License. Certain commodities in the supplement, indicated by footnote, may be exported under the Distribution License only when approved in advance for use by a specific end-user consignee or a customer of a consignee approved as an end-user. Other commodities in the Supplement, indicated by footnote, may be exported to a country not listed in Supplement No. 2 to Part 373 only when approved in advance for use by a specific consignee or a customer of a consignee approved as an end-user. Customers within countries listed in Supplement No. 2 need not be approved in advance for this latter group of commodities. To obtain approval, the distribution license holder will send to the Office of Export Administration (OEA) a listing of customers he/she wishes to be approved for this Supplement 4 procedure in triplicate. OEA will validate the listing and return it to the distribution license holder. If OEA approves, the applicant and approved foreign consignees will be authorized to supply only those

Supplement No. 4 items listed and approved, and only to end-users approved by OEA.

(c) *Eligible parties.*—(1) *Applicant/Licenseholder qualifications.* The applicant must establish and maintain its eligibility to participate in the DL privilege. It must be deemed reliable by OEA. In evaluating the reliability of a party, OEA will consider all relevant information, including such factors as:

(i) Whether there is adverse information on the party's compliance with U.S.-export controls;

(ii) Whether the party both demonstrates the technical expertise and adopts the internal systems necessary to comply with the requirements of the Distribution License regulations; and

(iii) Whether the party commits the necessary resources to implement an adequate internal control program.

(2) *Applicant-consignee relationship.* The consignee of a Distribution License may be:

(i) A party that is controlled in fact by the license applicant. For purposes of Part 373, the term "controlled in fact" shall have the same meaning as contained in § 369.1(c) (1), (2) and (5); or

(ii) An unrelated party that has entered into a written agreement with the license applicant to adhere to all provisions of the Export Administration Regulations, and related documentation applicable to an approved consignee; or

(iii) Any other party receiving commodities under the distribution license.

(3) *Activities of consignees.*

Regardless of the relationship between license holder and consignee, approved consignees' activities will be divided into two basic categories for purposes of reporting and recordkeeping. Consignees may have activities that are included in either or both of these categories.

(i) *Resellers.* A reseller is a party who receives U.S. origin commodities for the purpose of resale to other parties. This category includes parties who resell commodities in the form in which received, parties who make modifications or add value (e.g., software or peripheral devices) before reselling or reexporting commodities that are primarily of U.S. origin, parties who attach a U.S. commodity in the same or essentially the same form as received to foreign equipment, and parties who supply U.S. commodities as support equipment to foreign products.

(ii) *End-users.* An end-user is a party who actually uses U.S. origin commodities permanently (e.g., as capital equipment), or incorporates them as integral parts, components, or

materials in the production of primarily foreign origin commodities.

(4) *Prerequisite volume of business and consignee reliability.* (i) The exporter shall have a reasonable expectation that the Distribution License, if granted, will replace in the first year of operation under the procedure at least 25 individual validated export licenses that would otherwise be required.

(ii) The assessment of the reliability of a proposed foreign consignee shall take into account such factors as whether it A:

(A) Has an ongoing business relationship with the applicant of at least one year;

(B) Is approved under another Distribution License;

(C) Has a satisfactory record established through Department of Commerce pre-license checks, or extensive experience as a consignee under individual validated licenses; or

(D) Is a controlled in fact affiliate of the applicant or of an approved foreign consignee.

(5) *Order requirement.* An applicant for a Distribution License need not hold an order, as defined in § 372.6(a)(1), from the proposed consignees for the commodities subject to this procedure at the time of applying for the license. Evidence of a consignee's firm intention to place orders on a continuing basis if approved under Distribution License may be required by OEA at the time of application submission from proposed consignees classifiable under paragraph (c)(2)(iii) of this section.

(d) *Application for Distribution License.*—(1) *Prior consultation for new applicants.* The preparation of an initial application for a Distribution License requires a substantial amount of work by the proposed license holder. Since the prospective applicants will have to provide strong evidence of applicant and consignee reliability, and may not qualify for the privilege, a prospective applicant is required to consult with the Multiple Licensing Branch of the Office of Export Administration before preparing and submitting an application.

(2) *Documents required.* Each application for a Distribution License shall include the documents listed in paragraph (d)(2) (i) through (iii) of this section prepared in accordance with the instruction set out in paragraph (d)(3) of this section:

(i) Form ITA-622P, Application for Export License.

(ii) Form ITA-6052P, Statement by Foreign Consignee in Support of Special License Application. This form must be submitted for each foreign consignee. If

the consignee is a foreign government agency, as defined in § 375.2(b)(3), Form ITA-6052P is not required. The form must be accompanied by certain certifications by the consignee.

(iii) Comprehensive Narrative Statement by the Applicant.

(3) *Preparation of documents.* (i) Form ITA-622P, Application for Export License. The applicant shall prepare and submit the application in accordance with the provisions of § 372.4, except that the applicant shall follow the instructions furnished in Supplement No. 5 to Part 373. The ECCN, and subentry, if necessary, for each type of commodity that will be exported under the license must be listed, except that spare or replacement parts for listed commodities may be supplied under the Distribution License without specifying the CCL entries for such parts if shipments of such parts will not exceed 20% of the value of the total exports under the license.

(ii) Form ITA-6052P, Statement by Foreign Consignee in Support of Special License Application. Unless the consignee is a foreign-government agency, other than a government-controlled institution of higher learning (university, academy, college, etc.), all consignees must sign Form ITA-6052P. Three originals (or single sheet copies printed back-to-back) of Form ITA-6052P shall be manually signed by the consignee or by a responsible official of the consignee who is authorized to bind the consignee to all of the items, undertakings, and commitments set forth on the Form. All copies shall be co-signed by the applicant and submitted with the application to OEA. Each Form ITA-6052P shall contain the following information or certifications on the form or on an attachment to the form, as appropriate.

(A) Certification of internal control program. Each consignee shall certify, in box 7 "Additional Information" on the Form ITA-6052P or an attachment, to the existence of an internal control program as described in § 373.3(e)(2) ensuring compliance with the Export Administration Regulations.

(B) Notice restricting reexport. Each Form ITA-6052P shall include a certification that no commodities received under the license will be reexported unless the new country of destination has been approved by OEA and that the consignee agrees to the notice requirements described in § 373.3(j).

(C) Temporary exports. Consignees who wish to exhibit or demonstrate commodities in countries other than those in which they are located or are authorized on the Form ITA-6052P may

receive permission by providing the following additional certification on the Form ITA-6052P (and establishing internal controls applicable to such transactions):

I (We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive goods under the Distribution License Procedure. The commodities exported will be retained under my (our) ownership and control, and will be returned to me (us) promptly after their exhibit or demonstration abroad, and in no case later than one year after the date of reexport, unless other disposition is authorized in writing by the Office of Export Administration.

Those consignees who have already been approved on a valid Form ITA-6052P may submit the required certification separately on company letterhead for validation by the Office of Export Administration.

(D) Each consignee must describe the scope of activities under the license in sufficient detail for OEA to determine whether the consignee is a reseller as described in § 373.3(c)(3)(i), and end-user as described in § 373.3(c)(3)(ii), or both. In the absence of sufficient detail for OEA to make this determination on otherwise acceptable applications, the consignee will be considered to be a reseller.

(E) Other certifications required of the consignee. Applicable certifications should be attached to the Form ITA-6052P.

(1) Each consignee must provide a certification that records required under § 373.3(m) will be made available upon request by the Department of Commerce.

(2) Consignees must certify that they will comply with the Export Administration Regulations, including the recordkeeping provisions of § 373.3(m) and applicable audit requirements of § 373.3(n).

(3) For sales and servicing involving South Africa or Namibia, the appropriate certification(s) described below shall be entered in Item 7 of the Form ITA-6052P or furnished on consignees' letterhead.

(i) The following certification required by § 373.1 is to be completed by consignees approved under the Distribution License procedure and located in the Republic of South Africa or Namibia, or by consignees outside the Republic of South Africa or Namibia who are authorized to reexport or distribute commodities (other than computers and computer-related equipment) in the Republic of South Africa or Namibia:

I (We) certify that commodities received under this Distribution License will not be

sold or otherwise made available, directly or indirectly, to or for use by or for police or military entities in the Republic of South Africa or Namibia or used to service equipment owned, controlled or used by or for these entities.

(ii) The following certification required by § 373.1 is to be completed by all foreign consignees of Distribution Licenses who have been authorized to use U.S. origin parts in the manufacture of foreign origin end-products intended for export to the Republic of South Africa or Namibia, if the end-product, were it being exported from the United States, would be controlled for national security, nuclear non-proliferation, or crime control reasons.

I (We) certify that the commodities received under this Distribution License will not be used in the production of commodities that will be sold or otherwise made available, directly or indirectly, to or for the use by or for police or military entities in the Republic of South Africa or Namibia.

(iii) The following certification is to be completed by all consignees approved under the Distribution License procedure located in the Republic of South Africa or Namibia or by consignees outside the Republic of South Africa or Namibia who are authorized to reexport to or distribute computers or computer-related equipment in the Republic of South Africa:

I (We) certify that the commodities and/or technical data received under this license will not be sold or otherwise made available, directly or indirectly, to or for the use by or for police, military and nuclear entities of the Republic of South Africa or Namibia; the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Manpower Utilization, the Department of Justice, the Department of Community Development, and administrative bodies of the "Homelands" that carry out similar functions. These commodities and/or technical data are not to be used to service equipment owned, controlled or used by or for the entities named above.

(iii) Comprehensive narrative statement. A comprehensive narrative statement must be submitted by the applicant in support of the application. This statement shall describe the applicant's proposed utilization of the distribution license including:

(A) Overview of proposed use of license. Briefly describe the nature of business activity of the applicant firm, the sources of product proposed to be exported under the license, the estimated annual volume of exports under the license during its validity period, the primary activities of the various classes of proposed consignees

(e.g., sales, manufacturing, assembly, warehousing/redistribution, etc.) and the anticipated nature and volume of regular and repetitive transactions, if any, proposed between consignees under the license. Specify if the distribution license is solely for distribution. Describe any proposed manufacturing, assembly and testing, servicing, or other activities. (Firms may provide in this statement a more specific description of products proposed for export; in some instances, such as description will improve license processing time.) Indicate whether the firm or any affiliated entity currently has any other special "bulk" licenses and give applicable numbers and expiration dates.

(B) Consignee activity and relationship.

(1) New applicants or renewal applicants should indicate the dollar volume of sales or other transactions with each consignee in the commodities involved during the 12 month period or last calendar year before submission of the application. To maintain consignee eligibility, renewal applicants must demonstrate ongoing activity with each consignee under the license.

(2) Indicate the nature of the relationship with the Distribution License holder/applicant (i.e., controlled in fact, contract, independent reseller) and principal activity(ies) (i.e., reseller and/or end-user) of each proposed consignee. For each applicable consignee list the countries in the proposed reexport territories.

(C) Certification of internal control program. License holders and applicants must certify that there is in place or ready to be put in place upon approval of the application by OEA an internal control program that incorporates the elements set forth in § 373.3(e)(1). The applicant should indicate whether any of the elements for an internal control program in § 373.3(e)(1) have not been implemented and explain why these elements were deemed inapplicable. Existence of a properly constructed internal control program will *not* relieve the license holder of liability for improper use of or failure to comply with the requirements of all applicable regulations pertaining to its Distribution License.

(D) Authorized reexport territory. If a proposed consignee will be reselling in countries other than the one in which the consignee is located, except countries listed in Supplement No. 2 to Part 373, either the applicant or the proposed consignee must provide a justification for reexporting to such countries. Each such consignee should have had at least six transactions with

firms in each such country involving controlled commodities in the one year preceding submission of the application. When this level of prior activity does not exist, the justification should include a description of the marketing activity proposed or underway in each such country and the number of sales or transactions in controlled commodities anticipated during the validity period of the application. (For purposes of this § 373.3, a "reexport territory" is defined as a list of specific destinations within Country Groups T and V, excluding Afghanistan, Iran and the People's Republic of China, in which the consignee has a history of sales or in which sales have been planned during the validity period of the license.) All applicants proposing to ship to consignees that will have reexport territories shall include in their internal control systems measures intended to ensure consignee compliance with the Distribution License procedure.

(E) Applicants having three or fewer proposed consignees generally will not qualify for a Distribution License. Such applicants must include a justification for participation in the procedure, including reasons why the individual validated license procedure is not practicable for their export purposes.

(e) *Internal control programs.*—(1) *License holder or applicant.* Each license holder and applicant is required to have an internal control program designed to ensure compliance with all conditions of the Distribution License and the Export Administration Regulations. The nature of the control program will depend on the characteristics of the individual distribution license and the relationship between the license holder and the approved consignees. The applicant must certify to the existence of an internal control program that generally includes the following:

(i) Clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of distribution license compliance;

(ii) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the Distribution License procedure;

(iii) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (TDO) (Supplement No. 1 Part 388) and other regulatory material necessary to ensure compliance;

(iv) A methodology for screening against the TDO orders/shipments to customers covering servicing, sales of commodities, software sales, and training;

(v) A system for assuring compliance with product and country restrictions, including controls over reexports by consignees and over direct shipments to consignees' customers;

(vi) An internal audit system or compliance review program for the applicant or license holder extending to all consignees;

(vii) A system for assuring compliance with the limits on delivery to nuclear end-uses/end-users;

(viii) A continuing program for informing and educating those parties in the license holder or applicant firm and consignee firms in the applicable regulations, limits and restrictions of the Distribution License procedure;

(ix) A process for license holders, when the drop shipment privilege contained in § 373.3(k) is used, to screen and identify the relevant customers with a potential high risk for diversion that takes into consideration, but is not limited to, the following factors:

(A) Customer is small and little known (financial information unavailable from normal commercial sources and corporate principals unknown by trade sources).

(B) Customer does not wish to utilize commonly available installation and maintenance services.

(C) Customer is reluctant to provide end-use/end-user information.

(D) Customer requests atypical payment terms or currencies.

(E) Order amounts, packaging, or delivery routing do not correspond with normal industry practice.

(F) Performance/design characteristics of commodity ordered incompatible with customer's line of business or stated end-use.

(G) Customer uses only "P.O. Box" address or has facilities that appear inappropriate for the commodity(ies) ordered.

(H) Customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).

(I) Customer is known to have, or is suspected of having, unauthorized dealings with parties and/or destinations in Country Groups Q, S, W, Y and Z and the PRC, Afghanistan and Iran.

When any of the above characteristics have been identified but through

followup inquiries/investigation have not been satisfactorily resolved, the consignee should not transact any business with the customer before contacting the license holder. If the license holder is unable to resolve the problem, a request for assistance should be made in writing to contact the Multiple Licensing Branch, OEA, to explain the basis for the concern regarding the proposed customer and to determine if there is information available on the reliability of the customer. Foreign consignees and license holders should consider use of an individual validated license or reexport authorization before establishing an ongoing relationship with new customers under a Distribution License.

(x) A program for recordkeeping as required by the Export Administration Regulations.

(xi) An order processing system affixing responsibility for all required internal control reviews.

(xii) A system for monitoring intransit shipments and shipments to bonded warehouses and free trade zones.

(xiii) A system for notifying OEA promptly if the license holder has knowledge that a consignee is not in compliance with terms of the DL.

(2) *Consignees.* Each approved consignee under a distribution license program is required, on an attachment to the Form ITA-6052P, to certify to the existence of an internal control program that generally includes elements listed below:

(i) Statement of consignee policy, communicated from consignee management to consignee employees, directing compliance with provisions of the Export Administration Regulations pertaining to the distribution license procedure.

(ii) Maintenance of current list of employees charged with export compliance responsibilities.

(iii) System for screening hardware, software, training and servicing transactions against Table of Denial Orders and updates thereto supplied by the Distribution License holder.

(iv) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form ITA-6052P, and for exports of products incorporating commodities received under the Distribution License.

(v) System for complying with the nuclear restrictions under the procedure.

(vi) An internal audit program to verify consignee compliance with its internal control program.

(vii) Education program for employees processing transactions involving products received under the procedure.

(viii) Process for screening customers against the diversion risk profile described in paragraph (e)(1)(ix) of this section.

(ix) Recordkeeping and reporting systems required under § 373.3(h)(m) of the EAR.

(x) Order processing system that documents employee clearance of transactions in accordance with applicable elements described above.

A consignee that has previously certified under a currently valid distribution license may, in lieu of certification, cite on the Form ITA-6052P the applicable license number and three digit consignee number of the valid Distribution License. Each consignee's control program is subject to audits by OEA.

(f) *Action on license applications.*—(1) *Application review.* The Distribution License procedure authorizes multiple export transactions without review and approval of each individual transaction by OEA. Thus, before approving such a license, OEA must be fully satisfied that the persons benefiting from this special licensing procedure can be relied upon to adhere to the conditions of the license and the Export Administration Regulations, and that the approval of the application will not be detrimental to U.S. interests. To permit OEA to make such judgments, each application will be reviewed by OEA and the Office of Export Enforcement to establish the reliability of the parties to the license. An initial review may also entail an audit of past export transactions, inspection of documents, and interviews of firm officials in the United States and abroad. If OEA cannot verify that appropriate procedures are in place or establish the reliability of the proposed parties to the license, it may deny the application or modify it by eliminating parties from the application or by removing certain commodities or countries included in the application. However, failure to obtain approval to participate in this special licensing procedure does not preclude the filing of an application for an individual validated license or reexport authorization.

(2) *Application processing.* (i) Within 10 days of receipt in the Multiple Licensing Branch, OEA will acknowledge receipt and furnish a 6-digit identification number preceded by a single letter, for reference purposes.

(ii) Within 45 days of receipt in the Multiple Licensing Branch, OEA shall advise applicants of any correctable problems, deficiencies or clarifications before final processing.

(iii) Generally, applications that are complete in all material respects and do

not require supplemental information from applicants will be processed within 90 days of receipt by OEA. Certain individual consignees may require more time for review.

(3) *Approved license applications.* When an application or a portion of an application for a Distribution License is approved, Form ITA-628, Export License, is issued by the Office of Export Administration authorizing the export of commodities covered during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and provisions of the license.

(i) *Validation.* The license will be validated in the license number space with a stamp that includes a facsimile of the U.S. Department of Commerce seal, the letter "D", and a series of numbers to indicate the year, month, and day on which the license was validated. For an explanation of the coded dates shown on the license, see § 373.2(d)(1)(i).

(ii) *Validity period.* A new Distribution License will be valid for two years from the last day of the month in which it is issued and may be extended once by amendment for a two-year period. Thereafter, a new application must be submitted. If approved, it will be valid for four years.

(iii) *Case number.* The case number consists of a letter followed by six digits and is used for initial computerization of the application information, subsequent retrieval, and reference purposes.

(iv) *Distribution License number.* The Distribution License number will be indicated immediately below the validation stamp. This will be a four-digit number prefixed by the letter "V".

(v) *Special conditions.* OEA may impose special conditions on the use of a Distribution License that are more restrictive than the general conditions specified in the Export Administration Regulations. In such cases, the special conditions will be set forth on the license document, or riders thereto, or by subsequent communication from OEA. Special conditions may include, but are not limited to, specific commodity restrictions, deletion of countries from proposed reexport territories, and deletion of countries listed on consignee's Form ITA-6052P as proposed destinations of products incorporating commodities received under a Distribution License.

OEA may at any time prohibit the sale or transfer of commodities under the DL procedure to specified firms or individuals. In such cases, the DL holder shall be required to inform all consignees. Individual validated licenses or reexport authorizations shall

be required for subsequent transactions with such parties.

(4) *Applications returned without action.* When a Distribution License application is returned without action, the application, together with related documents, will be returned to the applicant with Form ITA-651, Advice on Application Returned Without Action (RWA). This form will state the reason for return of the license application and will explain the deficiencies or additional information required for OEA to reconsider the application. Resubmissions must be made within 120 days of RWA to be considered. Thereafter, a new application will be required.

(5) *Applications rejected.* When an application for a Distribution License is rejected, the applicant will be notified on Form ITA-687, Notification of Rejection of Export License Application, or by letter, with the reason for the action specified. The applicant may apply for an individual or other appropriate type of validated license for transactions that would have been covered by the Distribution License application that was rejected.

(g) *Action on Form ITA-6052P—(1) Approval.* Concurrently with the approval of a Distribution License application or approval of an amendment adding a consignee, two validated copies of each Form ITA-6052P will be sent to the license holder. One copy is to be retained by the license holder and one copy is to be sent by the exporter to the approved consignee.

(2) *Rejection.* If a consignee is not approved, the form will be returned to the U.S. exporter with a rider stating the reason for this action.

(3) *Notice to approved consignee.* The letter of transmittal of each approved Form ITA-6052P must be sent by the exporter to each approved consignee and must include (or have attached) the following:

(i) A description of recordkeeping requirements, applicable to the activities of the consignee;

(ii) Information to each consignee authorized to reexport on the approved Form ITA-6052P of reexport restrictions on any product received under the Distribution License;

(iii) A description of or copy of § 373.1(f) listing actions that may be taken for improper use of or failure to comply with the special licensing procedure;

(iv) A description of any special conditions or restrictions on the license applicable to the consignee, including the approved list of customers eligible to receive product listed in Supplement No. 4, if applicable;

(v) A description of elements of the license holder's internal control program relevant to the consignee, and a copy of the high risk customer profile contained in § 373.3(e)(1)(ix);

(vi) A copy of the Table of Denial Orders Currently in Effect and notification that the consignee will be receiving revisions from the license holder of this list of individuals and firms or other individuals or firms to whom the consignee may not sell or otherwise dispose of the U.S. commodities received under the Distribution License;

(vii) Special documentation requirements for consignees exporting or reexporting products to destinations having such requirements (see § 373.3(h)).

(viii) A notice to the consignee that, in addition to other requirements, it may not sell or otherwise dispose of any U.S. origin commodities when it knows or has reason to know the commodities will be diverted or reexported to unauthorized destinations or end-user, or will be used in designing, developing, or fabricating nuclear weapons or nuclear explosive devices; in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions; in the chemical processing of irradiated special nuclear or source material; in the production of heavy water; in the separation of isotopes of source and special nuclear material; or in the fabrication of nuclear reactor fuel containing plutonium. The consignee must also be advised that § 373.3(a)(2) prohibits the export or delivery of commodities to nuclear end-users or for nuclear end-uses except in countries not listed in either Supp. Nos. 2 or 3 to Part 373. A description of what constitutes a nuclear end-user or end-use must also be provided.

(ix) Clear notice to the consignee that the consignee is required to acknowledge, in writing, receipt of the letter of transmittal and certify that it will comply with all of the requirements, including establishment of an internal control program.

(h) *Special documentation for specific destinations.—(1) Exports by license holders.* A Swiss Blue Import Certificate or Yugoslav End-Use Certificate, as appropriate, covering distribution or use within Switzerland or Yugoslavia, must be obtained from the respective government and forwarded to the license holder before any export is made to these destinations. As exports are completed under the Swiss Blue Import Certificates and Yugoslav End-Use Certificates, they must be reported quarterly to OEA by submitting all completed certificates or copies of

partially used certificates with a cover sheet summarizing for each certificate the complete or partial shipment. These should be forwarded to the Office of Export Administration, Multiple Licensing Branch, Room 1814, U.S. Department of Commerce, Washington, D.C. 20230, with the notation "Special Documentation" on the envelope. Thereafter, partial shipments must be reported as specified above to the Multiple License Branch quarterly by letter, giving the certificate number, the quantities and dates of any such partial shipments made during the quarter and the balance remaining unused at the end of the quarter. This special documentation requirement is also subject to certain recordkeeping provisions of § 373.3(m)(1).

(2) *Reexports by consignees.* An approved consignee may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as applicable. The Swiss Blue Import Certificate need not be submitted to OEA but shall be retained by the consignee in accordance with the recordkeeping provisions described in section 373.3(m)(1). The original of each Yugoslav End-Use Certificate issued, or a reproduced copy if the original is required by the government of the country in which the distributor is located, shall be forwarded quarterly by the distributor to the license holder.

(3) *Stocking in bond.* An approved consignee in Switzerland, without obtaining a Swiss Blue Import Certificate, may stock commodities in Switzerland for reexport as authorized by the Distribution License. However, such commodities may be released for distribution or use within Switzerland only after a Swiss Blue Import Certificate covering the transaction has been obtained and forwarded to the license holder. As shipments are made from bond into Switzerland, they shall be reported to OEA through the license holder according to § 373.3(h)(1).

(i) *Export clearance.* (1) *Value of shipments.* There is no value limitation on shipments under a valid Distribution License. However, the value of each shipment must be shown on the Shipper's Export Declaration.

(2) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under the Distribution License shall be prepared in accordance with standard instructions. Although the Distribution License may describe the commodities in broad items, commodity descriptions on the Declaration shall be specific. The description shall:

(i) Conform to the applicable Commodity Control List description, and cite the Export Control Commodity Number in parentheses beneath the Schedule B number in Item 10;

(ii) Incorporate any additional information where required by Schedule B; (e.g., the type, size, or name of the specific commodity). In addition, the Declaration shall include in the lower portion of column 10 a licensing symbol consisting of the current Distribution License number followed by a blank space, and then a three-digit numerical designation identifying the licensee's approved consignee to whom the shipment is being made. These consignee numbers will be assigned by OEA to all the licensee's approved consignees in order to monitor exports.

(iii) Firms authorized to file summary SED reports to the U.S. Census Bureau may, on the request of OEA, be required to submit for OEA inspection copies of such reports applicable to exports under a Distribution License.

(3) *Mail shipments.* Shipments by mail shall be made in accordance with the instructions contained in § 386.1(b).

(4) *Destination control statement.* The U.S. exporter shall enter one of the two following destination control statements, as appropriate, on the commercial invoice and bill of lading or air waybill covering exports under the Distribution License procedure:

(i) These commodities licensed by the United States for ultimate destination (name of country where the distributor is located). Diversion contrary to U.S. law prohibited.

(ii) These commodities licensed by the United States for ultimate destination (name of country where the distributor is located) and for distribution or resale in (name(s) of country(ies) to which reexport has been authorized as indicated on approved Form ITA-6052P. Diversion contrary to U.S. law prohibited.

Use of the statement contained in paragraph (i)(4)(i) does not preclude the consignee from reexporting to any of the license holder's other approved consignees or to other countries for which specific prior approval has been received from OEA. In such instances, reexport is not contrary to U.S. law and, hence, is not prohibited.

(j) *Reexports and notice requirements.* Unless an approved consignee meets the conditions set forth in this § 373.3(j), no commodities received by an approved consignee under a Distribution License may be reexported without specific prior written approval from OEA. The written approval may be included on a validated Form ITA-6052P

or a validated Form ITA-699P (see Part 374).

(1) *End user.* An end-user as described in § 373.3(c)(3)(ii) who is an approved consignee under a Distribution License may export manufactured products incorporating U.S. commodities received under a Distribution License to any destination he has listed on the Form ITA-6052P that has been approved by OEA. However, reexport of U.S. origin commodities in the form received is prohibited, unless specifically authorized in writing by the U.S. Government. An end-user who requests authorization to reexport U.S. origin spare parts to service manufactured products incorporating these parts will generally be granted permission if the end-user:

- (i) Can establish that the volume of such parts shipments will be reasonable;
- (ii) Agrees to maintain records; and
- (iii) Agrees to permit OEA audits of such reexports.

(2) An approved consignee under a Distribution License (other than end-users classified under § 373.3(c)(3)(ii)), may reexport commodities received under the Distribution License in accordance with the following rules:

(i) A consignee may reexport product in the form received to any destination included in the reexport territory listed on the Form ITA-6052P and approved by OEA, provided the country is an eligible country as defined in § 373.3(a) and the commodity is not excluded from shipment to that country by § 373.3(b) of the regulations or by special rider on the license.

(ii) An approved consignee, may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as provided in § 373.3(h).

(iii) *Temporary reexports.* Approved consignees, may reexport temporarily to eligible countries defined in § 373.3(a), whether or not included in an authorized reexport territory, for exhibit or demonstration, provided the consignee has complied with the assurance requirements in § 373.3(d)(3)(ii)(C) and is approved for such activity by OEA.

(3) *All consignees.* (i) An approved consignee reexport to any of the license holder's other consignees approved under the Distribution License procedure, except that commodities listed on Supplement No. 4 to Part 373 may be reexported only to parties who are approved by OEA as suitable end-users.

(ii) An approved consignee may reexport only eligible commodities and only to eligible countries. See § 373.3 (a)

and (b) respectively for country and commodity limitations, as well as the footnotes in Supplement Nos. 1 and 4 to Part 373.

(iii) Unless specifically exempted on the license or subsequently in writing by OEA, all approved consignees reselling commodities received under the procedure must notify their customers on the commercial invoice (or by such other means specifically approved by OEA) of restrictions on unauthorized reexport. Except when made a special condition on a license, this notice will not be required when the shipment is to a consignee's customer in a country listed in Supplement No. 2 to this Part 373, when the customer is either another approved consignee under the Distribution License or a foreign government agency, or when the customer is a retail customer. The notice shall read as follows:

These commodities were authorized for export from the United States under a special Distribution License procedure on the condition that they may not be reexported without prior approval from United States authorities.

More specific wording referring to the Export Administration Regulations or the need for OEA approval may be used at the option of the approved consignee. The notice may be translated into an appropriate language.

(4) *Request for specific reexport authorization.* A request for specific authorization for any reexport under a Distribution License not authorized by § 373.3(j) (1), (2), (3) or (5), shall be submitted on Form ITA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, or by letter, to the Office of Export Administration at the address in § 373.1(d). (See § 374.3.) Each request shall be supported by any document required for an individual reexport request under § 374.3(c).

(5) *Permissive reexports.* Approved consignees may take advantage of the permissive reexport provisions of § 374.2 provided that accurate records are maintained. (General License GTE is available only to the U.S. registrant and can only be cited as authority for a permissive reexport when the reexporting party is the same legal entity as the U.S. registrant. Thus, it is not generally available for permissive reexports by Distribution License consignees. Consignees may, however, take advantage of § 373.3(j)(3)(iii) to export temporarily for exhibit or demonstration.)

(k) *Direct shipments to consignee's customer.* A Distribution License consignee may request the license holder or another approved consignee

under the same license to deliver a product directly to his/her customer in the requesting consignee's same country of destination or in another country authorized to receive exports under the requesting consignee's validated Form ITA-6052P. The license holder may make a direct shipment by entering on the Shipper's Export Declaration the name and address of the customer as ultimate consignee and adding the notation "by order of (name of consignee requesting the direct shipment and his/her address)". The notation shall appear below the commodity description and shall cite the Distribution License number followed by the three digit number of the consignee requesting the "by order of" shipment. An approved consignee may make a direct reexport shipment to a customer of another approved consignee by showing on his/her record of the shipment the name and address of the customer as ultimate consignee and adding the notation "by order of (name of consignee requesting the direct shipment and his/her address)". This procedure may not be used for commodities included in Supplement No. 4 to Part 373 unless specifically authorized in advance by OEA. License holders and consignees utilizing the direct shipment provision may invoice the shipments directly to the requesting consignee's customers if copies of applicable invoices are maintained by both the shipping party and requesting consignee. License holders and consignees utilizing direct shipments shall be required to have internal controls relative to such shipments.

(1) *Amendments of Distribution Licenses.* (1) *Form to use.* All requests for amendment shall be submitted on Form ITA-685P in the usual manner (see § 372.11).

(2) *Amendment processing.* (i) Within 30 days of receipt, OEA shall advise applicants of any correctable problems, deficiencies, or clarifications before final processing.

(ii) Generally, amendments complete in all material respects that do not require supplemental information will be processed within 60 days of receipt by OEA.

(3) *Extensions by amendment.* (i) A new Distribution License is valid for two years and may be extended for an additional two-year period by submitting Form ITA-685P, Request For and Notice of Amendment Action, supported by the Certification in paragraph (k)(3)(ii) of this section. Thereafter, two-year extensions will be unnecessary, but renewal applications must be submitted and, if approved, will provide a validity period of four years.

(ii) A request to extend the validity period of a Distribution License must be supported by the following certification:

I (We) certify that all the facts and intentions set forth in our previously submitted application and comprehensive narrative statement remain the same except (enter the word "none" or specify the changes).

(iii) To requalify consignees, applicants for extensions must demonstrate ongoing activity with each consignee under the license.

(iv) License holders who are unable to submit a renewal application in a timely manner and need a temporary extension shall submit Form ITA-685P stating in Box 12 the reason why the temporary extension is needed.

(v) When to apply. An extension request must be submitted to OEA at least 90 days before the scheduled expiration date in order to avoid interruption of shipments under the license.

(vi) Action by OEA. OEA analyzes each extension request to determine whether an extension is justified under the eligibility criteria referred to in paragraph (c) of this section. OEA will validate and return the yellow copy of Form ITA-685P to the licensee for retention in its files. Licensees shall be required to inform all consignees of the new license expiration date, as appropriate.

(4) *Other amendments.* (i) *Addition of consignees.* If the exporter wishes to add a new consignee, he/she should file a Form ITA-6052P with Form ITA-685P, in accordance with § 372.11. If the new consignee is a foreign government agency, this fact must be entered in the "Amend License to Read as Follows" space in the Form ITA-685P; but a Form ITA-6052P need not be submitted. Information secured by the license holder established the reliability of the new consignee should be included with the request to add a consignee.

(ii) *Deletion of consignees.* If a license holder discontinues its business relationship with a consignee before the expiration of the license, a Form ITA-685P deleting the consignee must be submitted immediately. The amendment request must indicate the reasons for termination and specify whether it involves noncompliance or perceived noncompliance with the Regulations or the terms of the license.

(iii) *Change of name.* If the license holder changes the firm name, the change must be submitted on Form ITA-685P. The license holder must send a copy of the newly validated Form ITA-685P to all consignees and inform them to attach the copy to their validated

Form ITA-6052P. If a consignee changes its name, the exporter should advise the Department of Commerce promptly and submit new Form ITA-6052P from the consignee.

(iv) *Change of address.* No amendment is necessary covering a change of address only. The exporter need only submit notification of the change on company letterhead to the Multiple License Branch, Office of Export Administration, Room 2087, P.O. Box 273, Washington, DC 20044. However, should a consignee move from one country to another, it will be necessary for the license holder to submit new Forms ITA-6052P from the new address, along with a Form ITA-685P.

(v) *Adding product by amendment.* A license holder must submit Form ITA-685P to request addition of commodities/products not covered by the commodity description on the approved application.

(vi) *Change in commodity classification.* When OEA announces a change in export controls that places a commodity formerly authorized for export by general license under validated license control, the license holder must submit Form ITA-685P in order to qualify the commodity for shipment under the Distribution License. If OEA revises the CCL, changing ECCNs for commodities already covered by the Distribution License, no action by the license holder is necessary until a renewal application is submitted.

(vii) *Addition of end-users for Supplement 4 commodities.* If the exporter wishes to add a new end-user for commodities listed in Supp. No. 4 to Part 373, he/she should file a Form ITA-685P, Request For and Notice of Amendment Action, in accordance with § 372.11. Included with this request to add end-users should be information secured by the license holder to establish the reliability of the new end-user.

(viii) *Other changes.* Changes other than cited above, such as a change in the ownership or control of the license holder or consignee firms, should be submitted on a letter describing the circumstances necessitating the change.

(m) *Records.*—(1) *License holder and consignees.*

(i) *Form ITA-6052P.* Validated Forms ITA-6052P and applicable attachments thereto shall be maintained at the site of the foreign consignee. The license holder shall maintain one copy of each validated Form ITA-6052P and each form not approved. Each form shall be maintained for a period of two years beyond its validity period.

(ii) *Transmittal letter to consignees.* A copy of the transmittal letter required under § 373.3 and any attachments thereto shall be maintained for a period of two years beyond the validity of Form ITA-6052P by both the license holder and the consignee.

(iii) *Form ITA-685P.* Validated copies of amendments shall be maintained by the license holder for a period of two years beyond the validity of the license.

(iv) *Export records.* All other forms, documents, correspondence, memoranda, specifications and other records, including invoices, shipping documents and orders relating to all exports from the United States under the Distribution License shall be kept by the license holder in accordance with the recordkeeping requirements of § 387.13. Other records that must be kept by the license holder under § 387.13 include records on special documentation for specific destinations (see § 373.3(h)), records relating to special conditions (see § 373.3(f)(3)(v)) on license applications, and other records and reports confirming compliance with the requirements of the regulations and the license.

(v) *Table of Denial Orders.* Copies of the Table of Denial Orders (TDO), and each updates thereto, shall be maintained by all parties during the validity period of the license or Form ITA-6052P, as appropriate. Copies of the consignee's confirmation of receipt of TDO and updates thereto must also be maintained.

(vi) *Internal control program.* Copies of manuals, guidelines, policy statements, internal audit procedures, and other documents making up the internal control program of each party included under a DL shall be maintained on a current basis.

(2) *Records of sales and exports or reexports by consignees.* Records are to be maintained on transactions regarding any commodity received under Distribution License that is sold in the form in which received; in a modified, but essentially the same form; as an attachment in essentially original form to foreign equipment; and as support equipment to foreign products. Records on such sales or reexports shall include the following:

- (i) Full name and address of individual or firm to whom sale or reexport was made;
- (ii) Full description of each commodity sold or reexported;
- (iii) Units of quantity and value of each commodity sold or reexported; and
- (iv) Date of sale or reexport.

(3) *Inspection of records.* (i) All of the records in paragraphs (m) (1) and (2) of this section shall be made available for

inspection, upon request by OEA or by any other accredited representative of the U.S. Government, in accordance with § 387.13.

(ii) Foreign law may prohibit inspection of records by a U.S. Government representative in the foreign country where the records are located. In that event, the consignee must submit with the required copies of Form ITA-6052P an alternative arrangement for OEA to review consignee activities and determine whether or not the consignee has complied with U.S. export control laws and regulations.

(iii) Records must be maintained so that they are readily retrievable for inspection by OEA.

(iv) Failure to comply with requests for inspection of records. Distribution License holders or foreign consignees who fail to comply with requests to inspect documents may be subject to orders denying export privileges (see § 387.8) or to the administrative actions described in § 373.1(f).

(n) *Audits.* (1) *Post license audits.* All license holders and consignees are subject to audits by OEA. Such audits will be conducted at the discretion of OEA. Generally OEA will give reasonable notice to license holders and consignees in advance of the conduct of such audits. The audits will generally involve interviews with officials familiar with or responsible for Distribution License compliance, inspection of records and the review of internal control programs. Special unannounced audits may be initiated if OEA has reason to believe a license holder or consignee has improperly used or has failed to comply with the Distribution License regulations and conditions. Alleged violations established during the course of audits will be referred to the Office of Export Enforcement.

(2) *Mini Audits.* A consignee may be required on occasion to submit to OEA a listing of all sales under this license during specified previous months. Also, from time to time OEA may request from any consignee a listing of transactions during a specified, limited period involving direct shipments of commodities received under distribution license to customers of other consignees under § 373.3(k) and sales to customers in reexport territories authorized by OEA on the consignee's validated Form ITA-6052P.

(3) *Pre-license audits.* In addition to the requirement for pre-license consultation with OEA, new applicants may be required to cooperate in pre-license audits to establish the firm's credentials and reliability to participate in the Distribution License procedure.

Such may also include, but not be limited to, reviews of information collected to establish the credentials of proposed consignees.

(o) *Exceptions.* In the event that a licenseholder or consignee is unable to meet any of the requirements of the Distribution License procedure but believes that unusual circumstances warrant a waiver or an exception of one or more of these requirements, the license holder, and only the license holder, may consult with or write to OEA explaining the circumstances in full and request in writing a waiver or exception. OEA will give special consideration to requests for exceptions by small exporters with sound internal control program, demonstrably reliable consignees, and the requisite volume of business activity.

4. The following entries are added/ revised in Supplement No. 1 to Part 373, "Commodities Excluded From Certain Special License Procedures", each with footnotes as indicated. Entry 1355 is added between entries 3336 and 1357; the first entry 1565 and its first footnote are revised; and a third entry 1565 is added following the second entry 1565, reading as set forth below. In addition, existing footnotes are redesignated as follows: footnote 1 to entries 3362, 3363, and 4363 is redesignated as footnote 6; footnote 1 to entries 1534 and 1555 is redesignated as footnote 7; footnote 2 to entry 1565 is redesignated as footnote 7; footnote 2 to entry 1565 is redesignated as footnote 8 and revised; footnotes 3 and 4 to the first two 1565 entries are redesignated as footnotes 9 and 10; and footnote 1 to entry 1570 is redesignated as footnote 11.

#### Supplement No. 1—Commodities Excluded From Certain Special License Procedures.

1355<sup>2344</sup> Crystal pullers: computerized, or that are rechargeable without opening; Molecular beam epitaxial equipment; Electron beam systems for mask-making or semiconductor wafer or device processing; Electron beam, ion beam, or x-ray equipment for projection image transfer; Digitally controlled equipment specially designed for testing individual digital microcircuits capable of test rates of 40 megahertz or greater.

1565<sup>910</sup> Electronic computers exceeding a floating point processing data rate of 20 million bits per second, including any device, apparatus or accessory that upgrades a computer within the limits defined above.

1565<sup>24</sup> Specialized processing units that have an "equivalent multiply rate" in excess of 2 million (product) operations per second

(see ECCN 1565A, Advisory Note 16, for a definition of "equivalent multiply rate").

\* Excluded from the Distribution License procedure only.

\* The exclusion does not apply to spare and replacement parts for this equipment or to software.

\* Exclusion does not apply to the Project License or Service Supply License.

\* U.S. manufacturers of semiconductors or semiconductor manufacturing equipment may be authorized to export this equipment under the Distribution License if the recipients abroad are end-users engaged in the manufacture of semiconductor devices who have been approved in advance by OEA, and OEA has approved the exporter's means for assuring that the equipment has been received by the specified customer and has not subsequently been diverted from the original end-users.

\* Under the Distribution License procedure, electronic computers that do not exceed a floating point processing data rate of 1000 million bits per second may be exported to approved consignees in destinations listed in Supplement No. 2 to Part 373. Electronic computers that do not exceed a floating point processing data rate of 60 million bits per second may be exported under the Distribution License procedure to approved consignees in destinations listed in Supplement No. 3 to Part 373. This exception also applies to any device, apparatus or accessory that upgrades a computer within the limits defined above.

5. A Supplement No. 4 to Part 373 is added, reading as follows:

**Supplement No. 4—Special Distribution License Restrictions for Certain Commodities Included in the Commodity Control List**

The following commodities are subject to certain special restrictions, as specified in the applicable footnote (see § 373.3(b)(2)).

1355A:<sup>1</sup> Plasma-enhanced or photo-enhanced chemical reactor equipment, as defined in paragraph (b)(1)(iii)(c).

Equipment designed for ion implantation, or for ion-enhanced or photo-enhanced diffusion, as defined in paragraph (b)(1)(viii);

Photo-optical or non-photo-optical step and repeat or partial field equipment for transfer of the image onto the wafer, as defined in paragraph (b)(2)(ix);

Projection image transfer for processing slices (wafers) of 4 inches or greater in diameter;

Digitally controlled equipment specially designed for testing individual microcircuits, capable of performing functional (truth table) testing at a pattern rate greater than 20 MHz.

1370A:<sup>2</sup> Machine tools for generating optical quality surfaces, specially designed components and accessories therefor, and specially designed software.

1532A:<sup>3</sup> Linear measuring machines, except optical comparators, with two or more axes having a range in any axis greater than 200 mm and an accuracy (including any compensation) less (finer) than 0.0006mm per any 300mm segment of travel, as defined in paragraph (b);

Angular measuring systems having an accuracy equal to or less than 1 second of arc, except optical instruments, such as autocollimators, using collimated light to detect angular displacements of a mirror, as defined in paragraph (c).

1584:<sup>4</sup> Cathode ray oscilloscopes having amplifier bandwidths greater than 500 MHz; Oscilloscopes having cathode ray tubes incorporating microchannel plate electron multipliers capable of operating at frequencies greater than 1000 MHz; Digital oscilloscopes with sequential sampling of the input signal at an interval of less than 2 nanoseconds.

4585B:<sup>5</sup> Photographic equipment; aerial camera film having extended sensitivity and/or high resolutions or high temperature processing, as defined in paragraphs (b), (c), (d) and (e).

1733A:<sup>6</sup> Base materials, non-composite ceramic materials, ceramic-ceramic composite materials and precursor materials for the manufacture of high-temperature fine technical ceramic products; Precursor materials polycarbosilanes and polydiorganosilanes (for producing silicon carbide), as defined in paragraph (d)(1); Polysilazanes (for producing silicon nitride), as defined in paragraph (d)(2);

Polycarbosilanes (for producing ceramics with silicons, carbon and nitrogen components), as defined in paragraph (d)(3).

1746A:<sup>7</sup> Polymer substances and manufactures thereof; aromatic polyamides, as defined in paragraph (d).

4755B:<sup>8</sup> Silicone fluids and resins; silicone diffusion pump fluids having the capacity for producing ultimate pressure of less than 10<sup>-8</sup> Torr, as defined in paragraph (a).

1757A:<sup>9</sup> Semiconductor materials; silicon, gallium, gallium III/V compounds, gallium phosphide, indium, indium compounds, hetero-epitaxial materials, elemental Cd and Te, CdTe compounds, SiH<sub>4</sub>, SiClH<sub>3</sub>, SiCl<sub>2</sub>, SiCl<sub>3</sub>H and SiCl<sub>2</sub>H<sub>2</sub>, single crystal sapphire, B<sub>2</sub>O<sub>3</sub>, germanium, resist materials sensitive to X-rays, electron or ion beams, or specified for dry development, single crystal forms of bismuth germanium oxide, lithium niobate, lithium tantalite and/or aluminum phosphate.

<sup>1</sup> End-user data set forth in § 373.3(b)(2) is required for shipment to all destinations.

<sup>2</sup> End-user data for OEA review and approval set forth in § 373.3(b)(2) is not required for shipment to countries listed in Supplement No. 2 to Part 373.

6. A Supplement No. 5 to Part 373 is added, reading as follows:

**Supplement No. 5—Instructions for Distribution License Applicants When Completing Form ITA-622P**

(a) Item 1(a): If this is an initial application, leave blank. If a renewal, enter current V number and expiration date.

(b) The rest of item 1, and items 3 and 5 are self explanatory.

(c) Item 2: On renewal applications only, put the six-digit number, preceded by the applicable letter, assigned to the existing license.

(d) Item 4: Enter, "Distribution License, Initial" or, if appropriate, "Distribution License, Renewal."

(e) Items 6, 8, 13, 14, 17: enter "N.A."

(f) Item 7: Enter "See Attached List" and label the attached list as "Attachment Item 7". List each country in which consignees are located alphabetically, and under each country list the consignees located in that country, also alphabetically. Complete addresses (city, street, etc.) must be furnished for each consignee. Government agencies that meet the definition in section 375.2(b)(3) should be designated by the symbol (G) beside the name. Controlled-in-fact consignees should be designated by the symbol "(A)" next to the names, and consignees subject to written agreements should be designated by the symbol "(B)" next to their names. The list must be prepared in duplicate. The list, when submitted with renewal applications, should bear the three digit number assigned to each consignee to the left of the name. Also, if the application covers commodities listed in Supp. No. 4 to Part 373, the applicant shall list separately the end-user(s) of the commodities. Street and city addresses for each end-user must be furnished, and the list must be prepared in duplicate.

(g) Items 9(a) and (c) are left blank. Item 9(b): List separately on the face of ITA-622P the Export Control Commodity Numbers from the Commodity Control List (CCL) for the commodities proposed for coverage, with a summary description in estimated descending order of the anticipated export volume by value, (e.g., 1565 computers; 1355 manufacturing machinery). Do not list more than the projected top six numbers. To the right of the commodity description put the estimated percentage of total exports under the license; each such number is expected to represent in the first year following validation.

(1) List separately on an attachment to the Form ITA-622P (labeled "Attachment Item 9(b) product description") a description of each type of commodity to be exported and the appropriate Export Control Commodity Number for each. When the intent is to ship only certain types of goods within a CCL entry, the applicable paragraph designations should be listed. No entries totally excluded by Supplement No. 1 to this Part 373 may be listed. Brochures or product literature may be supplied at the option of the applicant; this may expedite processing of applications involving potentially sensitive products.

(2) Listings on the attachment of entries that are partially excluded by Supplement Numbers 1 or 4 to Part 373 must have the notation "except (insert paragraph number or description)" after the entry.

(3) Only commodities included in a CCL entry (or paragraph, if applicable) specifically listed on the application and approved by OEA may be exported under a Distribution License.

(4) Spare or replacement parts for listed commodities may be included without specifying a CCL entry if such parts shipments will not exceed 20% of the value of the total exports under the license and the applicant lists on the application—"Spare and replacement parts for commodities included in CCL entries (list entries)."

(5) The listing of the CCL entries by Export Control Commodity Number (and subparagraph designation, if applicable) will generally constitute a sufficient description of the commodities to be shipped.

(h) Enter the following statements at the bottom of the attachment to Item 9(b):

#### Description of Commodity or Technical Data

No commodity excluded from the Distribution License Procedure under the Export Administration Regulations or under this license will be exported to any consignee in any destination under this Distribution License if this application is approved.

7. A Supplement No. 6 is added to Part 373, reading as follows:

#### Supplement No. 6—Instructions for Distribution License Applicants When Completing Form ITA-6052P

(a) Item 1: Enter the complete address (city, street, etc.) where the consignee is located. (If records required by §§ 373.3(m) and 387.13 are maintained/stored separately, indicate this in Item 7.) A P.O. Box alone is not acceptable but may be indicated in Item 7 for mailing purposes. In the absence of a complete address, Form ITA-6052P will be returned without action.

(b) Item 2: Check Distribution License block. Insert the complete name, street and city address of applicant. Items 2, 4c, 5a, 5d, 9 and 10 are self explanatory.

(c) Item 3: Provide a summary description of the commodity(ies) proposed for import under the license. Firms that will not receive the entire range of products authorized on the license holder's Form ITA-622P may describe only the commodity(ies) they will receive. In some instances, consignee approval will be contingent on the nature of the product requested.

(d) Item 4a: The consignee must identify the nature of his/her principal business as it affects the disposition of commodities to be imported under this license (e.g., manufacturer, manufacturer/distributor, assembler/reseller, distributor, sales agent, warehouse).

(e) Item 4b: Indicate the relationship between the applicant and the consignee (e.g., controlled in fact subsidiary, consignee subject to contractual agreement ensuring compliance with Export Administration Regulations independent reseller).

(f) Item 5a: This item should be completed by end-user consignees importing the commodity(ies) for their own use (e.g., as capital equipment).

(g) Item 5b: This item should be completed by end-user consignees incorporating commodities received into a new end-product so that the identity of the U.S. commodity is lost in the manufacturing process (e.g., U.S. origin semiconductor devices are included in a foreign origin test instrument).

Geographical areas such as "South America" or "Africa" are not acceptable when listing countries to which the product of manufacture is proposed to be delivered. The consignee should prepare an attachment labeled "Item 5(b) Cont." describing the new end-product more specifically and stating how and to what extent the U.S. origin items will be used. The consignee should further indicate whether the new end-product exceeds the parameters of commodities listed in Supplement No. 1 to Part 373 for the countries to which export or sale is proposed.

(h) Item 5c: This item should be completed by firms that are requesting authorization to furnish or reexport repair parts received under the Distribution License to customers who have received either U.S. origin commodities or foreign origin goods that incorporate U.S. origin parts, components or

materials received by the consignee under the license.

(i) Item 5e: The consignee functioning as a distributor or reseller must list the specific countries to which the commodities are proposed to be reexported.

(j) Item 5f: This item should be checked by resellers to cover activities such as, but not limited to, the following:

(1) Assembling a finished product from kit form.

(2) Adding software to a U.S. computer or other device.

(3) Systems integration (i.e., assembling hardware and various components/software for a specific application by an end-user customer).

(4) Equipment added as support equipment (e.g., test equipment being shipped with a foreign system).

(5) Communication/navigation equipment installed on a customer's aircraft, direction finding equipment on a fishing vessel, etc.

(6) Adding discrete U.S. components to foreign systems.

Parties engaged in such activities are required to describe the proposed activities fully in an attachment to Item 5(f) and to list countries to which the products derived from these activities are proposed to be exported.

(k) Item 6: Is not applicable to a Distribution License.

(l) Item 7: In addition to any supplemental information from other items, indicate whether the firm is an active participant (consignee) under any other Distribution Licenses, and give license and consignee numbers.

Dated: May 21, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration

[FR Doc. 85-12598 Filed 5-22-85; 8:45 am]

BILLING CODE 3510-07-M

# **Register**

# **of**

# **the**

# **Federal**

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Friday  
May 24, 1985

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## **Part IV**

## **Department of Education**

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**34 CFR Part 500**

**Bilingual Education; General Provisions;  
Proposed Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 500

## Bilingual Education; General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary of Education proposes regulations to govern the evaluation activities of programs assisted under Part A of the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act, as amended) (Title VII). Section 733(a) of the Act requires the Secretary to issue regulations which set forth a comprehensive design for evaluating the activities of projects providing instructional services to limited English proficient persons.

**DATE:** Comments must be received on or before June 24, 1985.

**ADDRESS:** Comments should be addressed to Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 421, Reporters Building), Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

## FOR FURTHER INFORMATION

**CONTACT:** Ramon M. Chavez, Jr., Education Program Specialist, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 421, Reporters Building), Washington, D.C. 20202, Telephone (202) 245-2595.

**SUPPLEMENTARY INFORMATION:** The statutory authority for these evaluation requirements is Section 733 of Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, unless otherwise noted. (20 U.S.C. 3221-3262)

The Education Amendments of 1984, Pub. L. 98-511, substantively amended Title VII. Section 733 requires the Secretary to issue regulations which set forth a comprehensive design for evaluating the programs assisted under Part A of Title VII and provide for the collection of information and data on the operation and effectiveness of these programs. These proposed regulations will implement this statutory requirement.

These proposed regulations will govern the evaluation of the following

programs, beginning in Fiscal Year 1985: Program of Transitional Bilingual Education, Program of Developmental Bilingual Education, Special Alternative Instructional Program, Program of Academic Excellence, Family English Literacy Program, and Special Populations Program. Application notices and closing dates for new awards in Fiscal Year 1985 were published in the Federal Register on April 30, 1985. (50 FR 16392)

These proposed regulations establish general evaluation requirements and standards that a grantee assisted under Part A of Title VII must meet in carrying out the annual evaluation of a project which provides instructional services to limited English proficient persons. Section 500.50 of the proposed regulations sets forth a comprehensive evaluation design that a grantee must use to measure the educational achievement of project participants.

While a grantee's evaluation design may be based on comparisons to similar local, regional or national groups, a grantee should note that an evaluation design which compares project gains with those of national normative groups, when based primarily on monolingual English speaking persons, may not be appropriate as a measure of additional growth since such a comparison does not take into account the natural language acquisition of limited English proficient persons.

Section 500.51 of these proposed regulations requires a grantee to collect specific information, including the information required in Section 733 (a)(1)-(3) of the statute, using the comprehensive evaluation design in § 500.50.

Section 500.52 of these proposed regulations requires a grantee to report the information collected under § 500.51 of these proposed regulations to the Secretary on an annual basis.

For a particular grant period, the Secretary may announce in the Federal Register particular models, reporting requirements, and other technical standards that a grantee must use to conduct the evaluation. Before adopting any models, requirements, or standards, the Secretary would comply with applicable rulemaking requirements in Section 431 of the General Education Provisions Act, 20 U.S.C. 1232, and other applicable laws.

Grantees are encouraged to seek technical assistance from the Bilingual Evaluation Assistance Centers funded under Section 734 of Title VII, and other technical assistance providers including SEAs, and Multifunctional Centers funded under Section 742 of Title VII to carry out the requirements in this part.

Part 500 as currently in effect is withdrawn. Subparts A-E are reserved at this time. An NPRM will be issued in the future, for Part 500—Bilingual Education: General Provisions, Subpart A—General, Subpart B—What Kind of Projects Does the Secretary Assist?, and Subpart C—How Does One Apply for an Award? Subparts D and E will remain reserved. It is anticipated that final regulations for Subparts A-C will apply to Fiscal Year 1986 awards.

## Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Section 733 of Title VII requires the Secretary to issue regulations which set forth a comprehensive design for evaluating the programs assisted under Part A of Title VII. To the extent that small entities are grantees under the Part A programs, the evaluation information that a grantee must collect and report to the Secretary reflects the information required to comply with the statutory requirements, and will not impose undue burdens on the grantee.

## Paperwork Reduction Act of 1980

Sections 500.51 and 500.52 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

## Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being

gathered by or is available from any other agency or authority of the United States.

#### Intergovernmental Review

The programs affected by these evaluation requirements are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

#### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

#### List of Subjects in 34 CFR Part 500

Adult education, Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

#### Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: May 22, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 500 of Title 34 of the Code of Federal Regulations to read as follows:

### PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

#### Subparts A-E—[Reserved]

#### Subpart F—What Evaluation Requirements Must Be Met by a Recipient?

Sec.

500.50 What evaluation requirements apply to a grantee?

500.51 What evaluation information must a grantee collect?

500.52 What information must a grantee report to the Secretary?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

#### Subparts A-E—[Reserved]

#### Subpart F—What Evaluation Requirements Must Be Met by a Recipient?

§ 500.50 What evaluation requirements apply to a grantee?

(a) This section establishes a comprehensive design of the general evaluation requirements and standards that a grantee funded under programs authorized under part A of Title VII must meet in carrying out an annual evaluation of a project which provides instructional services to limited English proficient persons.

(b) A grantee's evaluation must comply with the following requirements.

(1) A grantee's evaluation design must include a measure of the educational achievement of project participants which can be attributed to the project when measured against an appropriate nonproject comparison group consisting of persons similar in age, grade, language, degree of language proficiency, and other relevant background variables.

(2) A grantee's evaluation design must meet the following technical standards.

(i) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools or agencies served by the projects.

(ii) *Reliability and validity of evaluation instruments and procedures.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, language, degree of language fluency and background of the persons served by the project.

(iii) *Evaluation procedures that minimize error.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, accurate scoring and transcription of results, and

the use of analysis and reporting procedures which are appropriate for the data obtained from the evaluation.

(iv) *Valid measurement of achievement gains.* The evaluation procedures must provide objective measures of the educational achievement of participants related to English language proficiency, native or second language proficiency (for programs of developmental bilingual education), and other subject matters.

(3)(i) A grantee's evaluation must provide information on the educational achievement of current participants in the project, who are—

(A) Children who are limited English proficient;

(B) Children whose language is English; and

(C) Children who were formerly limited English proficient.

(ii) This information must include—

(A) The amount of time (in years or school months, as appropriate) the participants received instructional services in the project, and as appropriate, in another instructional setting; and

(B) The participants' progress in achieving English language proficiency and, for programs of developmental bilingual education, progress in another language.

(20 U.S.C. 3243)

§ 500.51 What evaluation information must a grantee collect?

In carrying out the annual evaluation under § 500.50, a grantee shall collect information on—

(a) The educational background, needs, and competencies of the limited English proficient persons served by the project;

(b) The specific educational activities undertaken pursuant to the project;

(c) The pedagogical materials, methods, and techniques utilized in the program;

(d) With respect to classroom activities, the relative amount of instructional time spent with students on specific tasks; and

(e) The educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the project.

(20 U.S.C. 3243)

§ 500.52 What information must a grantee report to the Secretary?

A grantee shall report to the Secretary annually, the information collected in § 500.51 and an evaluation of the overall progress of the project including the extent of educational progress achieved

through the project measured, as appropriate, by—

(a) Tests of academic achievement in English language arts, and for programs of developmental bilingual education, second language arts;

(b) Tests of academic achievement in subject matter areas; and

(c) Changes in the rate of student—

(1) Grade-retention;

(2) Dropout;

(3) Absenteeism;

(4) Referral to or placement in special education classes;

(5) Placement in programs for the gifted and talented; and

(6) Enrollment in postsecondary education institutions.

(20 U.S.C. 3243)

[FR Doc. 85-12724 Filed 5-23-85; 8:45 am]

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